



REPORT TO THE PLANNING COMMISSION

CITY COUNCIL CHAMBERS, 3300 CAPITOL AVENUE, FREMONT CA 94538

General Order of Business

1. Preliminary (Call to Order – 7:00 p.m., Salute to the Flag, Roll Call, Approval of Minutes)
2. Consent Calendar
3. Oral Communications
4. Public Hearing Items
5. Matters of Interest
6. Adjournment



Addressing the Planning Commission

Any member of the public may speak on any item under discussion by the Planning Commission after “being recognized” by the Chairperson. To speak, walk to the rostrum directly in front of the Commission and, after the Chairperson recognizes you, state your name and address. Generally, after the Chairperson introduces an item, the order of presentation begins with comments by staff. The project applicant or their authorized representative may then comment. Next, interested members of the public may speak. Additional comments by the applicant or staff, as appropriate, may follow. At the close of testimony, the matter will return to the Planning Commission for discussion and action. Any item not introduced prior to 11:00 p.m. will automatically be “continued,” or held over, to the next regularly scheduled Planning Commission meeting.

Consent Calendar

Items on the Consent Calendar are scheduled public hearing items which are considered routine by the Planning Commission. The Consent items will be enacted by one motion and one vote and include the following:

- Items recommended for continuance to a later meeting.
- Items for which staff has received no indication of public concern and for which staff is recommending approval.
- Items which have been moved from the regular hearing agenda and placed on the Consent Calendar at the beginning of any particular meeting.

Items on the Consent Calendar may be removed by any member of the public or Planning Commission. If removed from the Consent Calendar, the item will be placed on the regular hearing agenda in its normal sequence on the agenda. When the Planning Commission approves a consent item, it approves the staff recommendation together with any conditions of approval included in the recommendation.

Please note that items on the regular hearing agenda may be placed on the Consent Calendar at the beginning of any particular meeting when requested by a member of the Planning Commission and with the approval of the Chairperson. If a Planning Commissioner requests that an item be moved from the regular hearing agenda and placed on the Consent Calendar, the Chairperson will ask if anyone in the audience or any other Commissioner wishes to speak to the item or have the item heard. If no one wishes to do so, the Chairperson may move the item to the Consent Calendar and it will be considered at that time. Accordingly, anyone wishing to speak to an item should be present at the beginning of the meeting.

Oral Communications

Any member of the public desiring to speak on a matter which is not scheduled on this agenda may do so under Oral Communications. As a matter of policy, the Planning Commission does not take immediate action on items presented under Oral Communications.

General Information

The Planning Commission usually meets on the 2nd and 4th Thursday of each month. [Exceptions: Only one meeting in August 27, November 12, and December 10.] Commission meetings are held in the City Council Chambers at 3300 Capitol Avenue.

Stenocaptioning and/or earphones for people who are hearing impaired are available from the Recording Clerk 15 minutes prior to the meeting. A driver's license will be held as a deposit. Commission meetings are open captioned for the deaf in the Council Chambers and closed captioned for home viewing. Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the Planning Department at (510) 494-4440. Planning Commission meetings are open captioned for the deaf in the Council Chambers and closed captioned for home viewing. For more information on Planning Commission please visit our website at <http://www.fremont.gov/index.aspx?NID=426> or contact the Planning Department at (510) 494-4440.

The regular meetings of the Fremont Planning Commission are broadcast on Cable Television Channel 27.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the Historical Architectural Review Board less than 72 hours prior to the meeting will be available for public inspection at 39550 Liberty Street during normal business hours, at the time the records are distributed to the Planning Commission.

Copies of staff report are available at the Development Services Center at 39550 Liberty Street (between Stevenson Blvd. and Walnut Ave.) and at City Hall at 3300 Capitol Avenue the week of the meeting and are free of charge. Plans and other supporting documents may be viewed any day until noon the day of the Planning Commission meeting. Copies will be provided at cost when feasible. The Development Services Center is open 8 a.m. to 4 p.m., Mondays through Thursdays; and 8 a.m. to 12 p.m., Fridays. Planning Commission final agendas, which include location maps, staff reports and proximity maps can also be viewed on the Internet at <http://ca-fremont.civicplus.com/Archive.aspx?AMID=50>.

The Planning Commission meetings are now also live over the Internet. Please note: Live webcasts are only available when the Planning Commission is in session. If the Planning Commission is not in session, the web browser will return a "busy" error.

To send an e-mail message to all of your Planning Commissioners send your message to:
planning_commission@fremont.gov

To leave a voice message for any of the Planning Commissioners, dial the numbers listed below:

David Bonaccorsi: 494-4895 *4998
Yogi Chugh: 494-4895 *4992
Richard King: 494-4895 *4995
Dirk Lorenz: 494-4895 *4997
Daniel Lydon: 494-4895 *4993
Lisa Quan: 494-4895 *4996
Dr. Rakesh Sharma: 494-4895 *4994

We appreciate your interest in the conduct of your City's business. Information about the City or the items discussed in this report may be referred to:

Planning Commission Secretary
City of Fremont Planning Division
39550 Liberty Street, P.O. Box 5006
Fremont, CA 94537-5006
Telephone: 510-494-4440

Planning Commissioners

Dr. Rakesh Sharma, Chairperson
Dirk Lorenz, Vice Chairperson
David Bonaccorsi
Yogi Chugh
Richard King
Daniel Lydon
Lisa Quan

City Staff

Jeff Schwob/Wayne Morris, Planning Commission Secretaries
Joan Borger, Assistant City Attorney
Scott Rennie, Senior Deputy City Attorney
Alice Malotte, Recording Clerk

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AGENDA
FREMONT PLANNING COMMISSION MEETING, JUNE 25, 2009
COUNCIL CHAMBERS, CITY HALL, 7:00 P.M.

1. PRELIMINARY

- 1.1 CALL TO ORDER**
- 1.2 SALUTE TO THE FLAG**
- 1.3 ROLL CALL**
- 1.4 APPROVAL OF MINUTES** – Regular Meeting of May 28, 2009
- 1.5 DISCLOSURES**

2. CONSENT CALENDAR:

NOTICE: ITEMS ON THE PUBLIC HEARING CALENDAR MAY BE MOVED TO THE CONSENT CALENDAR IF NO ONE IS PRESENT TO SPEAK ON THE ITEMS. ALL APPLICANTS AND INTERESTED PERSONS ARE ADVISED TO BE PRESENT AT THE START OF THE MEETING.

Item 1. RESTORATION GRADING PLAN - MISSION BOULEVARD - (PLN2009-00133) - to consider a Preliminary Grading Plan for restorative grading on an unaddressed parcel northeast of Mission Boulevard (APN 507-0124-029-00) in the Niles Planning Area. A Mitigated Negative Declaration has been prepared and circulated for this project in accordance with the requirements of the California Environmental Quality Act.

Project Planner - Joel Pullen, (510) 494-4436, jpullen@fremont.gov

Recommended Approve based upon findings and subject to conditions.
Action:

Item 2. FREMONT CHRISTIAN CUP - 4760 THORNTON AVENUE - (PLN2009-00163) - to consider a Conditional Use Permit amendment (U-82-11) for a 40,766 square foot expansion and reconstruction of school facilities for Fremont Christian School located in the Centerville Planning Area. This project is exempt from the California Environmental Quality Act per Guideline 15302, Replacement or Reconstruction of School Facilities.

Project Planner - Clifford Nguyen, (510) 494-4769, cnguyen@fremont.gov

Recommended Approve, based on Findings and subject to conditions.
Action:

- Item 3. MCDONALD'S CUP - 40708 GRIMMER BOULEVARD - (PLN2009-00177)** - to consider a Conditional Use Permit for a drive-through facility for a new restaurant that will replace an existing restaurant with a drive-through facility. The project also includes a Variance to reduce the rear yard landscaping from 10' to 8' along the rear property line for a parcel located in the Irvington Planning Area. This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15302, Replacement or Reconstruction of an existing structure and Guideline 15303, Minor Setback Variances.
Project Planner - Terence Wong, (510) 494-4456, twong@fremont.gov
Recommended Approve based findings subject to conditions.
Action:
- Item 6. MONTESSORI PRESCHOOL/DAYCARE - 4511 PERALTA BOULEVARD - (PLN2009-00217)** - to consider a Conditional Use Permit to allow a preschool and daycare facility to occupy an existing commercial building located in the Centerville Planning Area. This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15303 - Conversion of Minor Structures from One Use to Another.
Project Planner - Steve Kowalski, (510) 494-4532, skowalski@fremont.gov
Recommended Approve based on findings and subject to conditions.
Action:
- Item 8. CRYOSPEC, INC USE PERMIT - 41446 CHRISTY STREET - (PLN2009-00229)** - to consider a Conditional Use Permit to allow the storage of inert cryogenic liquids, along with limited amounts of flammable and oxidizing gases, within a new enclosure for an existing facility located in the Industrial Planning Area. This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15311, Accessory Structures.
Project Planner - Clifford Nguyen, (510) 494-4769, cnguyen@fremont.gov

Recommended Approve, based on findings and subject to conditions.
Action:
- Item 9. TOWN FAIRE 1 ACQUISITION - 39102 STATE STREET - (PLN2009-00243)** - to consider a General Plan Conformity Finding, pursuant to Government Code Section 65402(c), for the City's acquisition of property for the continued commercial Central Business District uses and potential future recreational uses including a civic park. The General Plan conformity finding is not a project as defined by California Environmental Quality Act (CEQA).
Project Planner - Terence Wong, (510) 494-4456, twong@fremont.gov

Recommended Find the property acquisition conforms to the City's General
Action: Plan.

3. PUBLIC/ORAL COMMUNICATIONS

4. PUBLIC HEARING ITEMS

Item 4. MAIN STREET VILLAGE - 3615 MAIN STREET - (PLN2009-00153) - to consider: a General Plan Amendment to change the land use designation from Medium Density Residential (15-18 dwelling units per acre) to High Density Residential (27-35 dwelling units per acre), a Rezoning from Planned District (P-84-12) to Multi-Family Residence District (R-3-35), Site Plan and Architectural Review to develop a 1.6-acre site with a residential project including 64-units and a Conditional Use Permit to allow 3,400 square feet of ground floor office space within the project located in the Irvington Planning Area. A Mitigated Negative Declaration has been prepared and circulated for this project in accordance with the requirement of the California Environmental Quality Act (CEQA).
Project Planner - Susan Summerford, (510) 494-4543, ssummerford@fremont.gov

Recommended Recommend to City Council.
Action:

Item 5. HOUSING ELEMENT - CITYWIDE - (PLN2005-00190) - to recommend that City Council adopt the updated Housing Element of the General Plan and submit to the State Housing and Community Development Department for their final certification. A Negative Declaration has been prepared and circulated for this project in accordance with the requirements of the California Environmental Quality Act.
Project Planner - Dan Schoenholz, (510) 494-4438, dschoenholz@fremont.gov

Recommended Recommend Approval to City Council.
Action:

Item 7. WANG SECOND STORY ADDITION - 94 MADRID - (PLN2009-00225) - to consider a Finding for Site Plan and Architectural Approval of a 1,247 sq. ft. second-story addition to an existing single-story home located in the Mission San Jose Planning Area. This project is categorically exempt from the California Environmental Quality Act (CEQA) per Guideline 15301 - Minor Additions to Existing Structures.
Project Planner - Steve Kowalski, (510) 494-4532, skowalski@fremont.gov

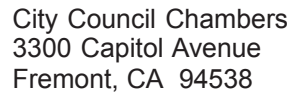
Recommended Approve based on findings and subject to conditions.
Action:

5. MISCELLANEOUS ITEMS

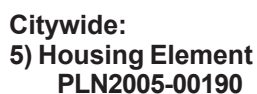
Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
 - Report on actions of City Council Regular Meeting
 - Discuss August 27, 2009 Work Session re: Planning Application Review
- Information from Commission: Commission members may report on matters of interest.

6. ADJOURNMENT



This map shows the general location of projects (by file number) which are scheduled for Planning Commission consideration.



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PLANNING COMMISSION STAFF REPORT JUNE 25, 2009

Project:	RESTORATION GRADING PLAN- (PLN2009-00133)
Proposal:	To consider a Preliminary Grading Plan and adoption of a Mitigated Negative Declaration under CEQA for restorative grading on an unaddressed parcel
Recommendation:	Approve based upon findings and subject to conditions
Location:	Northeast of Mission Boulevard in the Niles Planning Area. APN 507-0124-029-00 (See aerial photo next page)
Area:	9,425 cubic yards of cut and 9,540 cubic yard of fill within an approximately 4.65-acre portion of a vacant 61-acre lot
People:	Dr. Jagtar Sandhu, Applicant Darryl Alexander, Alexander & Associates, Engineer Wayne Ting, Wayne Ting & Associates, Geotechnical Engineer Harjot Khalsa, Gurdwara Sahib Temple President, Owner Joel Pullen, Staff Planner (510) 494-4436; jpullen@fremont.gov
Environmental Review:	A Draft Mitigated Negative Declaration has been prepared and circulated for this project in accordance with the requirements of the California Environmental Quality Act.
General Plan:	Hill Face Open Space
Zoning:	Open Space (O-S)

EXECUTIVE SUMMARY:

In order to remedy unauthorized grading on a hillside property, the applicant proposes to cut 9,425 cubic yards and fill 9,540 cubic yards of dirt for a total of 18,965 cubic yards of grading within an approximately 4.65-acre portion of the 61-acre parcel to restore the previous landforms on the site in order to restore aesthetics and to reduce potential for ongoing erosion. Following grading, the surface would be hydroseeded and outfitted with erosion control measures. There are no proposed land uses at this time, and no additional land uses will be permitted through approval of this application. Staff recommends adoption of the Draft Mitigated Negative Declaration and Mitigation Monitoring Plan and approval of the Preliminary Grading Plan subject to findings and conditions.



Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES:

- North: Vacant hillside land
- South: Single-family houses along Blaisdell Way
- East: Hillside ranchland
- West: Single-family houses along Mission Boulevard

BACKGROUND AND PREVIOUS ACTIONS:

The project site is a vacant hillside parcel that has been used for cattle grazing for decades. In 2005, the subject property and an adjacent parcel to the northeast was acquired by the Fremont Gurdwara Sahib. In April 2007, the City began code enforcement action after becoming aware that there had been some unauthorized grading performed to (1) create a roadlike path up from where the property connects to the 35900 block of Mission Boulevard, (2) flatten a rectangular ballfield-sized area in the saddle just past the knoll on the property, and (3) widen out a roadlike path that connects the northern corner of the parcel to the top of King Street. Since the grading work exceeds 1,000 cubic yards, and is proposed entirely above the Toe of the Hill, where grading to modify landforms is not permitted, the City required Fremont Gurdwara Sahib to apply for a Preliminary Grading Plan to restore the property to its original form, which application was received in December 2008. Over the last two years, erosion control measures have been installed, periodically inspected, and modified as necessary in order to minimize runoff. There are no additional development applications for the site pending at this time.

PROJECT DESCRIPTION:

The applicant proposes to cut 9,425 cubic yards and fill 9,540 cubic yards of dirt (the difference being due to the estimated shrinkage factor of compacted fill) within an approximately 4.65-acre portion of the 61-acre parcel in order to restore the previous landforms on the site. Following grading, the surface would be hydroseeded and outfitted with erosion control measures. There are no proposed land uses at this time, and no additional land uses will be permitted through approval of this application.

PROJECT ANALYSIS:

General Plan Conformance:

The existing General Plan land use designation for the project site is Open Space. The proposed project is for restorative grading only, and is not inconsistent with the existing General Plan land use designation for the project site because no site development is proposed within this area, and the area will not be further developed toward a specific use through pursuit of this grading proposal. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

GOAL OS 2: RECOGNITION, PROTECTION, AND ENHANCEMENT OF
SIGNIFICANT NATURAL AREAS AND WILDLIFE HABITATS IN
THE CITY, INCLUDING BAY TIDAL, SEASONAL, AND
FRESHWATER WETLANDS, AND OPEN MEADOWS AND FIELDS

Analysis: There are three areas of grading within the site, including a central flattened out area and two roadlike areas at the upper and lower extremes of the property. The upper roadlike portion, which is basically an enlarged cattle road, is relatively near a natural creek. An Initial Study and Draft Mitigated Negative Declaration were prepared and circulated with appropriate mitigations in order to reduce potential biological impacts due to proximity to the stream to a less than significant level.

POLICY LU 6.16: CONSISTENT WITH THE HILL AREA INITIATIVE OF 2002, ALL DEVELOPMENT SHALL BE DESIGNED TO MINIMIZE DISTURBANCES OF THE NATURAL TERRAIN AND VEGETATION AND TO MINIMIZE THE VISUAL IMPACT.

Analysis: Only the graded lower access road is discernibly visible from a public way—Mission Boulevard. Aesthetically, return of this area to its natural state would improve the appearance of the natural valley as viewed from Mission Boulevard. The portions that are not visible are nevertheless at steeper grades than those which were geologically created, and the surface materials have a higher propensity to sloughing off, which creates runoff along Mission Boulevard, adds to the turbidity of the creek during inclement weather, and denudes the landscape of vegetation if erosion control measures—themselves a visual impact—are not appropriately maintained. Restoring the natural grades would bring the site back to a more aesthetically acceptable and geotechnically superior angle of repose.

Zoning Regulations:

As set forth in Section 8-4108(a)(1) of the Fremont Municipal Code (FMC), grading in excess of 1,000 cubic yards in the Hill Face Open Space district is subject to a Preliminary Grading Plan reviewed by the Planning Commission.

The area under review for a Preliminary Grading Plan includes constrained land (greater than 30% slope). In accordance with FMC 8-21715.1(b), the applicant has provided geotechnical analysis, and the City finds that the constraint is capable of mitigation so that the proposed restoration grading can occur. Per Hill Face Open Space District standards, the area shall be appropriately landscaped and designed with erosion control measures described in the grading section.

Design Analysis:

Site Planning:

No site improvements or structures are proposed. The modifications proposed herein will not result in additional building capacity upon the lot. Any future proposals for use of the property would be required to be reviewed in accordance with City of Fremont regulations pertaining to development of hillside properties within the Hill Face Open Space district.

Open Space/Landscaping:

The proposed scope of work includes maintenance of the existing open space area after grading. The applicant will hydroseed the site with native grasses as required by typical erosion control measures through review and approval of the final grading and erosion control plans required by condition.

View Impacts:

Except for the access drive from Mission Boulevard, the area needing restoration is not visible from the west. However, the proposed action would restore the slope to a more aesthetically expected, safer, and less erosive angle of repose.

Circulation:

The proposed development is located on Mission Boulevard, which is an arterial street with partial curb and gutter street improvements in the vicinity of the project's frontage. Dirt hauling associated with grading is required to take place on established truck routes, and the applicant is required by Mitigation #1 in the environmental document to comply with standard dust control measures and keep the streets adjacent to the Mission Boulevard access point from getting dirt on them.

Grading & Drainage:

Grading for the project will primarily consist of restoring the land by rebuilding the disturbed slopes with engineered slopes. The slopes will be restored to the natural, pre-disturbed state. These engineered slopes will be constructed per the recommendations contained in the project geotechnical report.

Project grading is proposed in three distinct areas on this parcel. The first area is the linear access (approximately 400 feet long) from Mission Boulevard, between two small hills, and into the central disturbed area. Restoration in this first area will involve fills along the access way and rebuilding side slopes on small hills. The second area is the central disturbed area, which is a saddle feature between the two small hills along Mission Boulevard and the larger hillside to the east. The central area was significantly graded and flattened by cutting the northern and southern hillside slopes and filling the loose material in the central area. Restoration in this central area will involve excavating the central area (up to 10 feet in areas) to its natural elevations and reconstructing the side slopes. The third area is uphill of a natural creek along an unpaved trail that connects to a fire road and gate to the north. This trail was widened by cutting the hillside and placing the un-compacted material along the outboard side toward the creek. Restoration in this area will involve removing the excess loosely placed fill material along the edge of the roadway and rebuilding the hillside slopes.

During construction, and upon completion of grading, the project will implement erosion and sediment control measures. An erosion control plan shall be included as part of the grading plans for the project, subject to staff review and City Engineer approval. Long-term and sustainable erosion control, typically establishment of vegetation through hydroseeding, will be included as part of the plan.

Geologic Hazards:

The project site is within the Earthquake Fault Trace Zone on the official Alquist Priolo Fault Maps and within the Earthquake Induced Landslide Zone on the Seismic Hazard Zone maps, released by the State Geologist. The project does not propose construction of any structures for human occupancy; therefore, a special seismic hazard report is not required by State law. However, a project geotechnical report was completed and the grading plans were prepared in conformance with the recommendations in the project geotechnical report.

Environmental Review:

An Initial Study and Draft Mitigated Negative Declaration have been prepared for this project. The environmental analysis identified concerns regarding potential impacts to Biological Resources and Air

Quality. The Draft Mitigated Negative Declaration includes mitigation measures, which, if implemented, would reduce the identified impacts to non-significant levels. These mitigation measures have been included as conditions of approval for this project. A more detailed description of the potential impacts is provided within the Initial Study for the project, which is included as an enclosure.

Mitigation measures

In order to reduce potential impacts of dust during grading, Mitigation 1 prescribes dust control measures. Because one of the grading areas is relatively near a creek, Mitigation 2 requires effective separation from the area through installation and City inspection of a silt fence beyond which no grading or associated staging is permitted. In addition, a Mitigation Monitoring Program is recommended for adoption in order to ensure implementation of mitigation measures.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 123 notices were mailed to owners and occupants of property within approximately 1,000 feet from the disturbed area, within approximately 300 feet of the site access points on Mission Boulevard and King Street, and to all other properties otherwise between the subject hillside parcel and Mission Boulevard. In addition, 3 public hearing notices were mailed as a courtesy to interested parties. The notices to owners and occupants were mailed, and a public hearing notice was published by *The Tri-City Voice*, on June 10, 2009. Staff received several neighbor comments ensuring that the application was limited to restorative grading.

ENCLOSURES:

Exhibits:

- Exhibit "A" [Draft Mitigated Negative Declaration and Draft Mitigation Monitoring Plan](#)
- Exhibit "B" [Preliminary Grading Plans, Grading Sections, and Cross Sections](#)
- Exhibit "C" [Findings and Conditions](#)

Informational Items:

1. [Initial Study](#)

RECOMMENDATION:

1. Hold public hearing.
2. Adopt Draft Mitigated Negative Declaration and Draft Mitigation Monitoring Plan PLN2009-00133 and find these actions reflect the independent judgment of the City of Fremont.
3. Find Preliminary Grading Plan PLN2009-00133 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use and Open Space Chapters as enumerated within the staff report.
4. Approve PLN2009-00133, as shown on Exhibit "B", subject to findings and conditions in Exhibit "C".

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan
Shaded Area represents the Project Site

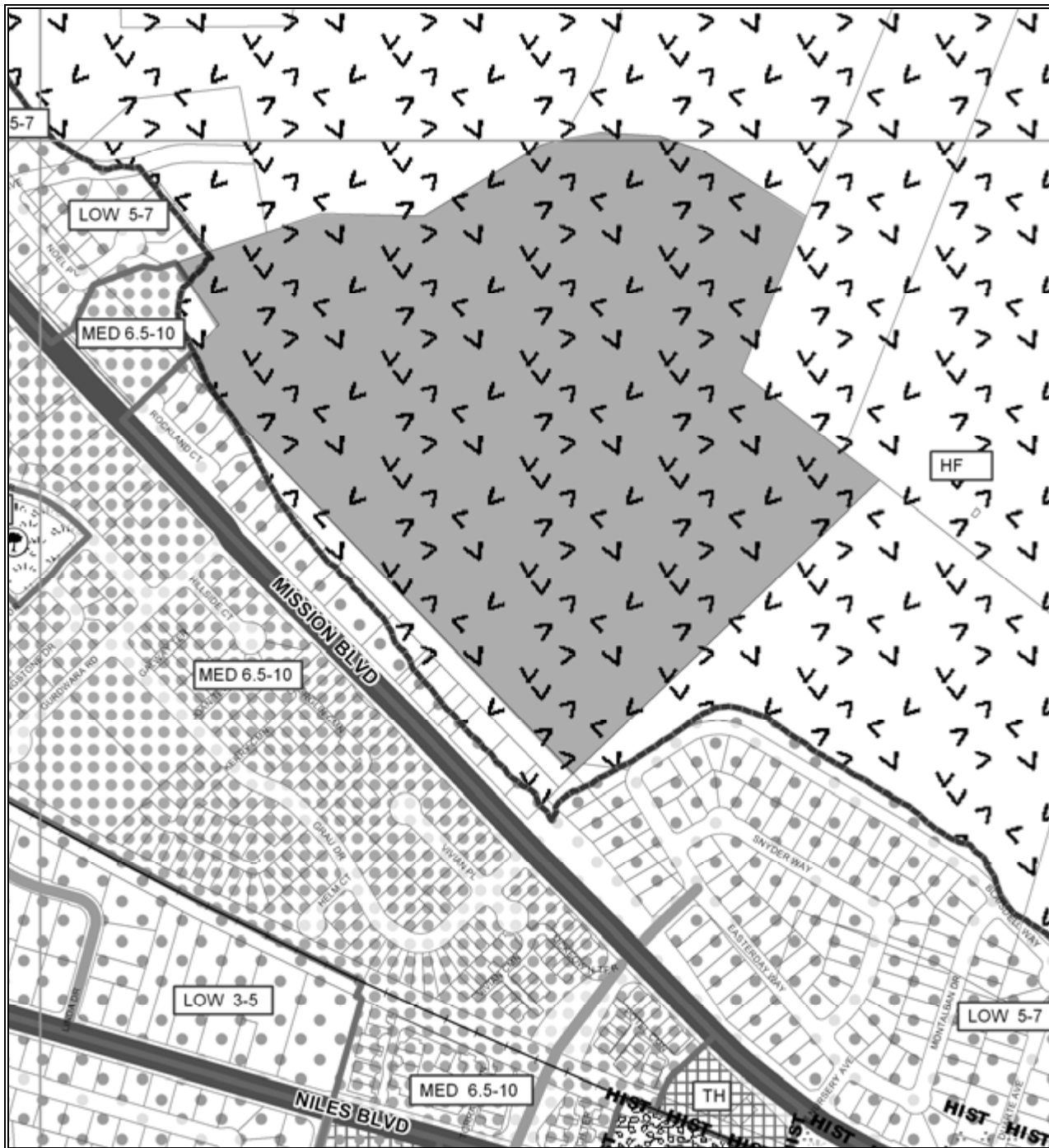


EXHIBIT “C”
Findings and Conditions of Approval
For PLN2009-00133, RESTORATION PRELIMINARY GRADING PLAN
507-0124-029-00

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated June 25, 2009, incorporated hereby.

- a. The proposed project described in the application will not have the appearance, due to the grading, excavation or fill, substantially and negatively different from the natural appearance because the appropriate amount of grading necessary to create a safe and aesthetically pleasing condition for a hillside area is being performed by restoring the slope.
- b. The proposed project described in the application will not result in geologic or topographic instability on or near the site because this action has been geotechnically reviewed for a scope of work specifically intended to restore the parcel's previous natural landforms.
- c. The proposed project described in the application will not endanger public sewers, storm drains, watercourses, streets, street improvements or other property; will not interfere with existing drainage courses; and will not result in debris being deposited on any public way because erosion control measures are required that will protect public improvements on Mission Boulevard from excessive runoff, and conditions of approval prevent interference with the drainage course.
- d. The proposed project described in the application will not unacceptably affect the health, safety or welfare of adjacent residents or landowners, nor the citizens of Fremont because the project mitigations include dust control, the restoration grading will improve slope safety, and standard grading and construction safety measures are required during site work.

CONDITIONS OF APPROVAL:

General Conditions

1. The project shall conform to Exhibit “B” (Preliminary Grading Plan) to accomplish restoration grading for grazing land within three distinct portions of the site totaling approximately 4.65 acres only in accordance with the project description enumerated within the staff report and all conditions of approval set forth herein.
2. Approval of this Preliminary Grading Plan does not extend to the final detailed design approval necessary to be accomplished in connection with the final grading plans.
3. Approval of this preliminary grading plan shall terminate 24 months from the date of approval by the Planning Commission.
4. Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed.

Prior to Issuance of Grading Permits

5. Construction-level detailed plans for the original grading or any future modifications shall be submitted to the City for review and approval to ensure conformance with conditions herein, as well as with relevant provisions of the Fremont Municipal Code, State, and federal law.
6. The applicant shall provide an erosion control plan, as part of the project plans, subject to review and approval by the City Engineer. This plan should also address protection of erosion control measures from cattle grazing operations until sustainable native vegetation has been established.
7. The final grading plan shall include existing and proposed elevation contours based upon a City of Fremont benchmark.
8. The project plans shall be designed in accordance with the required geotechnical report and subsequent letter reports. Grading shall be supervised by an engineer registered in the State of California to do such work.
9. The applicant may be allowed grading deviation up to a maximum of one foot (plus or minus) between the preliminary grading plan and the final grading plan. Deviation over one foot may be referred to the Planning Commission, subject to review and approval of the City Engineer.
10. A disposal site for the off-site haul dirt materials or source for the import fill shall be approved by the City prior to the approval of the grading permit. The off-site haul truck route for the excess dirt or import fill shall be subject to the approval of the City Engineer.
11. At the conclusion of Grading Plan review, the applicant shall obtain a final grading permit. A professional engineer registered in the State of California must prepare the final grading plan.
12. The grading permit issued for the project shall be in accordance with the Grading, Erosion, and Sediment Control Ordinance (Chapter 4, Title VIII of the Municipal Code). Grading shall be subject to the approval of the City Engineer.

Legal Requirements

13. Prior to issuance of a permit for land disturbance greater than one acre, the developer shall file a Notice of Intent with the State of California Water Resources Control Board and receive the State assigned WDID number. The developer shall provide a copy of the Storm Water Pollution Prevention Plan (SWPPP) for City review and maintain a copy on the job site.
14. The developer/property owner of the project site shall defend, indemnify, and hold harmless the City or any of its boards, commissions, agents, officers, and employees from any claim, action, or proceeding against the City, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul the approval of the project when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The City shall promptly notify the provider(s) of any such claim, action, or proceeding. The City shall have the option of coordinating the defense. Nothing contained in this condition shall prohibit the City from participating in a defense of any claim, action, or proceeding if the City bears its own attorney's fees and costs, and the City defends the action in good faith.

Special Project Conditions

15. Mitigation Measures:

- a. Mitigation Measure 1: Dust Control (PM₁₀) Measures: Prior to issuance of a permit, the following measures shall be included in a dust control plan and noted on construction plans with a designated contact person for on-site implementation of the dust control plan.
 1. Water all active construction and site preparation work areas at least twice daily and more often during windy periods.
 2. Cover all hauling trucks to maintain at least two feet of freeboard.
 3. Apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.
 4. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
 5. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas (i.e. previously graded areas that are inactive for 10 days or more).
 6. Enclose or cover securely exposed stockpiles.
 7. Replant vegetation in disturbed areas as quickly as possible.
 8. Suspend construction activities that cause visible dust plumes to extend beyond the construction site.

Implementation of the preceding measures results in a less than significant impact.

- b. Mitigation Measure 2: Prior to commencing grading work, the applicant shall install silt fencing along the existing barbed wire fencing along the northern edge of the area nearest the creek at all points where the grading work is closer than 50 feet from the creek centerline. Adequacy and minor modifications of the details for the fence installation shall be reviewed for approval and inspected by the City. No grading or staging activities shall be allowed to take place between the silt fencing and the creek.

During Construction Conditions

16. The applicant shall submit a tree survey if any trees become necessary for removal during grading activities. Appropriate mitigation for tree removal shall be determined if tree removal is necessary.
17. The Project Geotechnical Engineer shall be retained to inspect, test (as needed) and approve all aspects of geotechnical construction. The inspections should include, but not necessarily be limited to: site preparation and grading, site surface and subsurface drainage improvements and verification that the final slopes and drainage improvements are satisfactory from a geotechnical perspective.

18. Grading and on-site hauling operational hours will be limited in accordance with Section 8-2205 of the Fremont Municipal Code, and notes to this effect shall be placed on the cover sheet of the construction plans and on an all-weather notice board (format and content specified by City) conspicuously placed adjacent to the property's frontage on Mission Boulevard for the duration of the construction activity as follows:
 - a. Monday-Friday, 7 a.m. to 7 p.m.
 - b. Saturday & Holiday, 9 a.m. to 6 p.m.
 - c. Sunday, no construction activity allowed

Prior to Request for Final Inspection

19. The Project Geotechnical Engineer shall be retained to inspect, test (as needed) and approve all aspects of geotechnical construction. The results of these inspections and as-built conditions for the project should be described by the geotechnical engineer in a letter and submitted to the City Engineer for review prior final (as-built) project approval.
20. The project Civil Engineer shall submit record (as-built) plans to the City-Engineer for review prior to final project approval.

Ongoing Operational Condition

21. All erosion control measures installed under this grading permit must undergo, at the minimum, one annual inspection, at the end of the rainy season immediately following grading permit final approval, to document maintenance and repair needs and ensure compliance with the requirements of the Grading, Erosion and Sediment Control Ordinance of the City of Fremont (Sec. 8-4100). Inspections may include, but are not limited to: evaluating the condition of the erosion control measures; and reviewing maintenance and repair records. Any maintenance needs found must be addressed in a timely manner, as determined by the City of Fremont, and the inspection and maintenance requirement may be increased or decreased as deemed necessary to ensure proper functioning of the erosion control measures in a sustainable manner.

END OF CONDITIONS



PLANNING COMMISSION STAFF REPORT JUNE 25, 2009

Project: **FREMONT CHRISTIAN SCHOOL - (PLN2009-00163)**

Proposal: To consider a Conditional Use Permit Amendment to U-82-11 and Preliminary Grading Plan for a 40,766 square foot expansion and reconstruction of school facilities for Fremont Christian School.

Recommendation: Approve, based on Findings and subject to conditions.

Location: 4760 Thornton Avenue in the Centerville Planning Area.
APNs: 501-0455-029-02; 030-01
(See aerial photo next page)

Area: Site totals 15.97 acres

People: Rev. Ken Rankin, Applicant
Samer Kavar, BCA Architects, Inc., Agent of Applicant
Fremont Christian School, Owner
Clifford Nguyen, Staff Planner (510) 494-4769; cnguyen@fremont.gov

Environmental Review: This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15302, Replacement or Reconstruction of School Facilities.

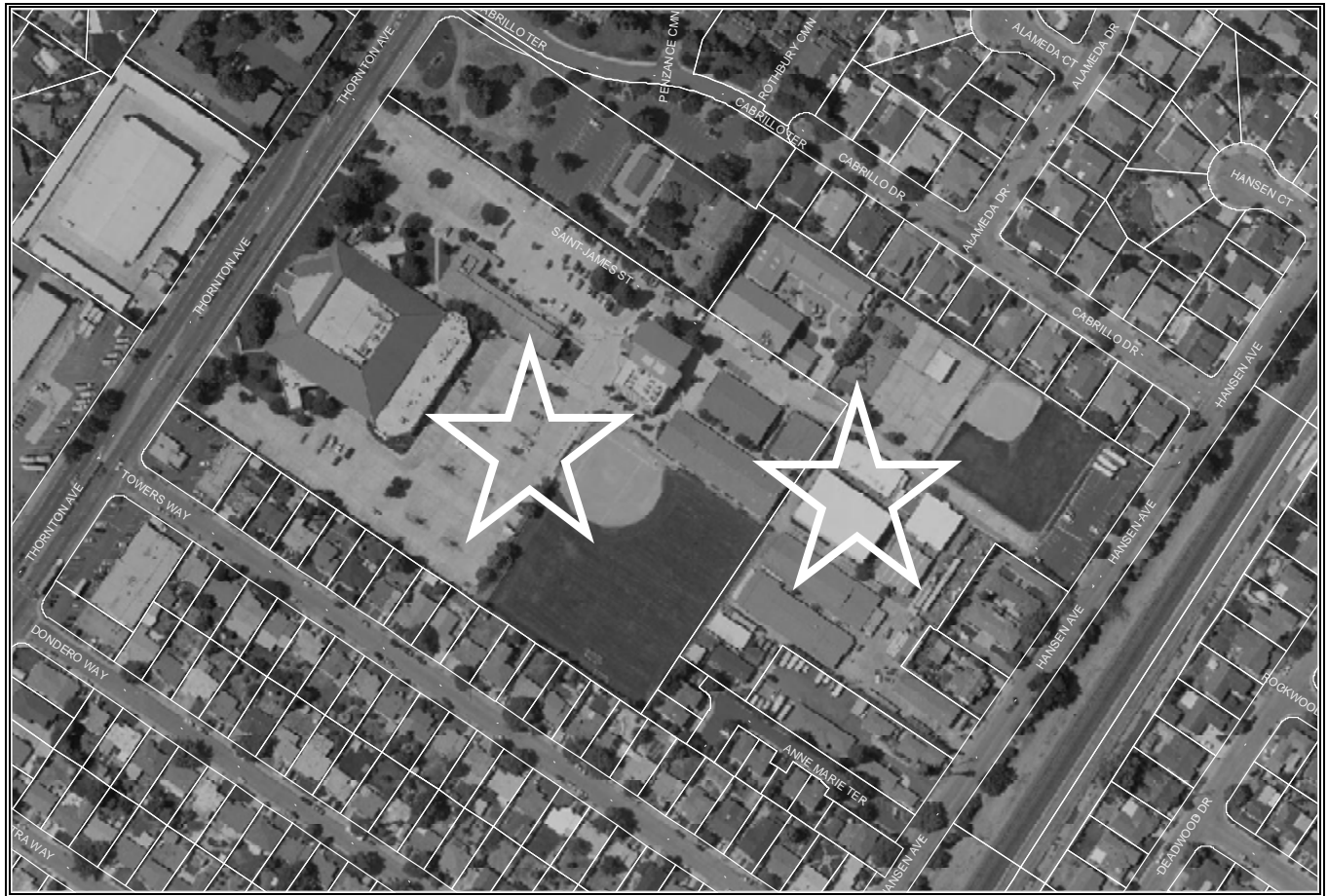
General Plan: Low Density Residential, 5-7 dwelling units per acre

Zoning: R-1-6, Single-family Residence District

EXECUTIVE SUMMARY:

The applicant, Fremont Christian School, requests approval of an Amendment to Conditional Use Permit U-82-11 and Preliminary Grading Plan to allow the construction of a 40,766 square foot expansion and reconstruction of school facilities over several phases in a master plan. In summary, eight existing older school buildings totaling 44,744 square feet would be removed and replaced with six new buildings totaling 85,510 square feet. Staff recommends approval of the Conditional Use Permit, as conditioned.

Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES:

- North: Religious facility (St. James Episcopal Church)
- South: Single-family residences
- East: Hansen Avenue, Union Pacific Railroad
- West: Thornton Avenue, commercial and multifamily residences

BACKGROUND AND PREVIOUS ACTIONS:

The project site's history is summarized below.

1. In October 1982, the Planning Commission adopted a negative declaration (EIA-82-31) to approve a Conditional Use Permit (U-82-11) and a Variance (V-82-18) to permit a new sanctuary building and related school facilities for the Fremont First Assembly of God Church (Harbor Light Church, as signature name). Subsequent approvals allowed for building expansions, several modular classroom buildings, a restroom building, and a picnic pavilion. Currently, 17 buildings exist on the site, including the Church. Eight of these buildings are proposed to be removed and replaced with six new buildings.
2. In August 1984, the Zoning Administrator approved a permit for a modular classroom building for childcare purposes.
3. In August 2000, the Zoning Administrator approved a permit to allow seven temporary modular structures on the site as an interim measure to replace the abrupt displacement of six classroom facilities that were destroyed by fire in July 2000. Other previous minor land use entitlements were approved, including a permit to allow roof-mounted telecommunications wireless facilities above the Church's sanctuary building.
4. In June 2001, the Planning Commission approved a Conditional Use Permit amendment (PLN2001-00266) to allow the construction of a new 14,000 square foot two story classroom/office building to permanently replace the classroom facilities destroyed by fire. The building included six classrooms, two new computer labs and school administration offices. The site area affected by the fire was redesigned to include a drop-off area and new parking spaces. These improvements have all been completed.
5. In December 2008, the City issued building permit for the reconstruction of two existing sports fields located at the school site. Reconstruction of both sports fields with synthetic grass, new bleachers, cyclone fencing and walls with sports netting are considered Phase I of the master plan envisioned. Phase I, not subject to this CUP Amendment application, is currently under construction.
6. In January 2009, the City received this proposed application for a Conditional Use Permit Amendment for the replacement of eight existing classroom buildings with six new buildings as part of a new master plan for the school.

PROJECT DESCRIPTION:

The applicant proposes an Amendment to their Conditional Use Permit (CUP) and Preliminary Grading Plan to allow a 40,766 square foot expansion and reconstruction of existing school facilities. The new facilities would replace existing school facilities that have outlived their expected useful life in accommodating school functions and activities. The proposed project is a master plan and is proposed to be completed in several phases. The intent of this master plan is not to increase school enrollment but to replace several substandard buildings on site that were constructed in the early part of the 1950s.

These older buildings have insufficiently-sized rooms of approximately 620 square feet that could not accommodate the current needs of students and faculty. Approval of the Amendment would facilitate this redevelopment and allow the applicant to proceed forward completing each phase as outlined below. The applicant's "Statement of Intent" is enclosed (Informational 1).

Site and Building Design Proposal

The master plan is proposed in phases, summarized as follows:

Phase I: Sports Fields (presently under construction)

- School sports fields, new bleachers and sports netting
- New perimeter wall.

Phase II: Proposed Buildings A, and B (by year 2010)

- Buildings A (20,000 s.f.): a two-story building with 18 basic classrooms and large computer lab for Juniors/Seniors, restrooms, teachers lounge, office for athletic director.
- Building B (2,040 s.f.): a one-story building with a Juniors/Seniors music room.

Phase III: Proposed Buildings C and D (by year 2012 to 2015)

- Building C (10,560 s.f.): a two-story building with general classrooms, restrooms, and larger specialty rooms.
- Building D (9,600 s.f.): a two-story building with a large first floor all school (i.e., K-12), library with support rooms on second floor.

Phase IV: Proposed Building E (by year 2014-2017)

- Buildings E (29,300 s.f.): a two-story building with a future gymnasium, basketball court and bleachers for up 800 spectators, a large room for youth activities, a kitchen and other physical education activities on second floor.

Phase V: Proposed Building F (by year 2016-2018)

- Building F (23,040 s.f.): a two-story building for 18 elementary classrooms, choir room and small specialty rooms for remedial education.

As part of each phase above, buildings proposed in each phase would be constructed with its associated site improvements, including landscaping, utilities, landscaping and stormwater treatment facilities. Each phase is planned to exist as an individual unit in the master plan. The anticipated uses described for each building would occur once the master plan is completed. The applicant requests that it be recognized that some overlapping of room usage by elementary and secondary classes may occur as the master plan is fully carried out, and that school facilities are also used by the Church when the school is not in session as currently permitted.

Religious Facility Operations

The existing Church was built in 1984-1985. The Church building provides a main sanctuary that seats approximately 1600 people, two nurseries, offices, and restrooms. The sanctuary is used by both the Church and the school. The existing Church building, however, is not at issue in the current proposal as the Church's services will remain unchanged and its congregation size is not expected to increase. The Church currently has 30 full-time staff, including Pastors, clerical and business office personnel.

School Operations

The Fremont Christian School currently provides pre-school, elementary (K-6), and secondary (grades 7-12) school services. There are approximately 97 full-time teachers, administrators and support staff; 80 part-time teachers; and, 11 general school administrators and support staff. The current school enrollment is approximately 1,098 students, which is anticipated to largely remain unchanged with the completion of the master plan. However, a maximum student enrollment of 1,400 students could be reached. Fremont Christian, however, has recently experienced a slight drop in elementary enrollment and slight increase in secondary enrollment. Over the past years, the school also experienced a drop in total enrollment which can largely be linked to the downturn of the economy.

PROJECT ANALYSIS:

General Plan/Zoning Conformance: The General Plan land use designation for the project site is Residential, 5-7 dwelling units per acre. The proposed project is consistent with the existing General Plan land use designation because schools are permissible uses, subject to conditional use permit approval (or amendment) pursuant to Land Use Policy 1.1. This Policy provides that schools are permitted in all residential districts where conditions are established to limit their impacts on surrounding uses. Several design and operational conditions are included consistent with this policy.

Zoning Conformance:

Parking: The Zoning Ordinance sets the following minimum parking requirements based on type of use applicable to the subject site:

Use	Parking Standard	Required Parking for Uses On Site ²
Elementary & Jr. High School	1 space per employee	92 spaces ³
High School	1 space per employee plus 1 space per 7 students	11 spaces ⁴
Church	1 space per 5 seats ¹	320 spaces ⁵
Daycare Facility	3 spaces, plus 1 for each 10 children over capacity of 15	20 spaces
Total Required Parking		443 spaces

¹ Seating capacity in principal hall

² Current enrollment/present uses

³ Assumes 92 teachers for grades K-11

⁴ Assumes five teachers for grade 12

⁵ Assumes 1,600 people in principal hall

A calculated minimum of 443 parking spaces are required for uses on the site. A total of 537 parking spaces on the site exceed this parking requirement. In addition, the uses are complimentary in that the Church's hours of operation do not coincide with the School's hours of operation. The City is also not aware of any complaints regarding a shortage of parking for the site. Lastly, parking attendants are provided on site, particularly during student drop-off and pick-up times for congestion management and to ensure that there is no backup onto the public streets.

Design Analysis:

Site Planning: The project site is bound to the northwest by an arterial road, Thornton Avenue (or State Route 84); to the southeast by a residential collector street, Hansen Avenue; and, residential homes to the east and west. The circulation pattern for student drop-off and pick-up by parents would remain unchanged which access from Thornton Avenue. Hansen Avenue is limited to school buses and emergency vehicles (also unchanged).

The general design for the school is that of a typical school layout. Constructed over phases, the new buildings are to be arranged around a large, consolidated open courtyard with an open amphitheater that could be used for school activities. The courtyard is the centerpiece of the main campus. It is designed to be surrounded by new classroom buildings that substantially buffer and attenuate school activity noises from adjacent residential homes. Connecting to this courtyard are student promenades that link the campus together.

Based on the current configuration of the site and surrounding constraints, staff finds that the site design is appropriate. To ensure that each phase of the master plan is implemented to exist as an individual unit in compliance with City requirements, policies, and other applicable laws, conditions are recommended to allow further refinements to each phase by staff (Condition 2). In addition, staff recommends some modifications to the site plan as analyzed below.

The proposed landscape plan is acceptable. Selected trees, shrub and groundcover plants are well adapted to Fremont's environment and should thrive at this location. While the plan shown is generally acceptable, a few modifications are recommended. The applicant should consider:

- Addition of a planter along the north side of the gym building (Building E) at the intersection of the two student promenades to provide added visual interest (Condition 14).
- Adding two species of trees to the design or tree palette for additional planting diversity (Condition 15).
- Exploring additional opportunities to reduce unnecessary pavement and adding planting areas (Condition 16).
- Providing additional seat walls to protect the planting areas and to allow for a variety of seating locations (Condition 17).

Architecture:

The proposed design of the buildings is modern in appearance, approximately 26 feet in height, two-stories and generally rectilinear in shape. The architectural style is consistent with the appearance of the newer elementary building (Building U on plans) on the site. Materials application to provide a modern look include standing seam metal shed roofs, clear anodized aluminum canopy awnings, aluminum

metal wall panels, and aluminum railing. The applicant also proposes beige painted cement plaster walls and a brown-red brick veneer as a rich contrast.

In response to staff's recommendation on the project design, the applicant modified the plan to include clerestory windows (high windows) along the facades facing residential homes to maximize privacy for neighboring homes and attenuate noise through design. Some additional minor enhancements are recommended, as follows:

- Selective application of the brick veneer: eliminating it from the mid-portion of the buildings on the second floor and instead increase the height of the brick veneer wainscot on the first floor (Condition 10).
- Consider future conversion or further enhancement of Building A's south façade (e.g., a future planned secondary entrance) if the two residential lots on Hansen Avenue are acquired in the future for inclusion with the school campus (Condition 11).
- Explore the possibility of breaking up long wall expanses through any combination of change in material, color, addition of vertical expansion joints (vertical stucco scoring), varying wall planes, and/or adding vertical pilasters to walls (Condition 12).

Since building elevations were only provided for Buildings A and B, staff recommends that the architectural review and approval of the remainder Buildings C through F be delegated to staff (Condition 2). Staff's understanding is that the architectural style and treatment of buildings proposed for the remainder of the campus is similar, if not identical, to the buildings shown in the plans. Staff recommendations approved by the Planning Commission would apply to future buildings of the master plan.

Circulation and Street Improvements:

As previously described, the school property has street frontage along Thornton Avenue to the northwest and Hansen Avenue to the southeast. On-site vehicular and pedestrian access will remain largely unchanged, except for the areas of the new courtyard and student promenades. As both street improvements are fully improved, no street improvements are necessary.

Grading & Drainage:

Grading will be required for building and site improvements, particularly for building foundation pads and for the creation of the central courtyard. The applicant's engineer estimates the site grading to involve 1,145 cubic yards of cut and 595 cubic yards of fill resulting in approximately 460 cubic yards of export after accounting for shrinkage. Since the total unadjusted grading quantity of 1,740 cubic yards is more than 1,000 cubic yards, approval of a Preliminary Grading Plan is recommended.

As proposed in the drainage plan, roof runoff will be collected by downspouts that either drain directly or indirectly through bubble-ups to in-ground flow through planters and vegetative swales. The sub-drains from these treatment devices eventually connect to an existing on-site 33 inch county storm drain main (Zone 5, F-14). Since there is no net increase in impervious area, it is expected that there will be no impacts to existing drainage facilities.

Green Building Practices: Conventional building and remodeling practices use a lot of natural resources and create a lot of waste. Debris from building construction and demolition accounts for more than 21%

of the materials disposed in Alameda County landfills. “Green building” means taking steps to create buildings that are safe and healthy for people and that protect our environment. While specific methods and products may vary from project to project, the basic principles of green building apply to all types of new construction and renovation. Staff will encourage the applicant to implement these green building practices in the design of the proposed project.

Bay-friendly Landscaping: This project must comply with Bay-Friendly Landscape City Council Resolution 2009-40, which requires all private development projects meet any seven (7) of the nine (9) basic required practices.

The Bay-Friendly Landscape Program (BFL) is a holistic approach to landscape design and maintenance that works in harmony with the natural conditions of the SF Bay watershed. Landscapes developed with the program prioritize criteria such as local climate, soils and topography. The goal is to develop landscapes with greater local pest resistance, less maintenance, less use of resources, and less generated waste (caused by constant pruning).

Urban Runoff Clean Water Program:

The Alameda Countywide National Pollution Discharge Elimination System (NPDES) Municipal Stormwater Permit requires all new development to incorporate measures to prevent pollutants from being conveyed in storm water runoff and into the public storm drain system. This project is required to comply with the NPDES permit by incorporating treatment measures into the project design, including entering into a maintenance agreement for stormwater facilities and erosion control.

The project intends to meet the quantitative storm water treatment requirements by constructing the aforementioned vegetative swales and numerous in-ground flow-through planters or bio-retention areas on the site. Each one of these designated flow through planters and vegetative swales will be accepting runoff from the roof (either directly or indirectly through bubble-ups) and adjacent tributary paved surfaces. The storm water treatment design must be integrated into the storm drain design for the project and is subject to review and approval of the City Engineer prior to building permit approval.

Geologic Hazards:

The project site is within an area of potential liquefaction on the official Seismic Hazard Zone maps, released by the State Geologist. In accordance with the State law, a geotechnical engineer must prepare a seismic hazard report for the development of the project. The project improvements and building construction must conform to the recommendations of the seismic hazard report. This report is reviewed and approved by the City and filed with the State Geologist prior to issuance of a building permit.

Applicable Fees: This project will be subject to Citywide Development Impact Fees. These fees may include fees for fire protection, capital facilities and traffic impact. All applicable fees shall be calculated and paid at the fee rates in effect at the time of building permit issuance.

Environmental Review: This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15302, Replacement or Reconstruction of School Facilities. The project involves the replacement or reconstruction of existing schools to provide earthquake resistant structures which do not increase capacity more than 50 percent.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 290 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on June 12, 2009. A Public Hearing Notice was published by *The Tri-City Voice* on June 10, 2009.

ENCLOSURES:

Exhibits:

- Exhibit "A" [Building and Site Development Master Plan](#)
- Exhibit "B" [Findings and Conditions of Approval](#)

Informational Items:

1. [May 2009 Fremont Christian School Statement of Intent Letter](#)

Supplemental Hearing Materials:

2. Color and Materials Board

RECOMMENDATION:

1. Hold public hearing.
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under 15302 of the CEQA Guidelines because the project involves the replacement or reconstruction of existing schools to provide earthquake resistant structures which do not increase capacity more than 50 percent.
3. Find the proposed project is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use Chapter as enumerated within the staff report.
4. Approve the proposed project, as shown on Exhibit "A", subject to findings and conditions in Exhibit "B".

Existing Zoning

Shaded Area represents the Project Site



Existing General Plan



EXHIBIT "B"
Findings and Conditions of Approval
For PLN2009-00163, Fremont Christian School
4760 Thornton Avenue
APNs: 501-0455-029-02; 030-01

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated June 25, 2009, incorporated hereby.

Conditional Use Permit Findings:

- a. The proposed use is consistent with the general plan because schools are conditionally permitted on land designated for single-family use. Through building and site design and the ongoing implementation of operational conditions, the proposed project will not conflict with existing, adjacent land uses.
- b. The site is suitable and adequate for the proposed use because sufficient information has been provided to demonstrate that the proposed operation and development would conform to ordinance requirements for a school use and the site is large enough to accommodate the use.
- c. The proposed use would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or other public facilities or services. Main access to the school site is from an arterial road and State route, Thornton Avenue; secondary access (for mainly school buses) is provided from Hansen Avenue. The existing roadway capacities, access points, and on-site circulation system are adequate to serve the proposed project, including sufficient provisions of parking facilities. There are no street improvements needed for the proposed project.
- d. The proposed use would not have a substantial adverse economic effect on nearby uses because the proposed use will remain unchanged as a school. Schools are not known to cause any substantial adverse economic effect on residential uses where they exist.
- e. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large because reconstruction of the school campus would be in compliance with all current building and fire code regulations. Adequate emergency access has been accounted for in the overall design of the master plan. While changes to the master plan may be needed to comply with the then fire and building codes adopted (e.g., modifications to site design), such changes are anticipated to not cause significant revisions to the overall layout of the master plan.
- f. The design of the project is compatible with existing and proposed development in the district and its surroundings because the new buildings proposed would replace substandard buildings. With eventual build-out of the master plan, the campus would improve the appearance of the neighborhood as a whole. Buildings are two-story, which helps minimize perceived massing and is more in keeping with the character of adjacent two-story homes.

- g. The project will comply with the provisions of article 27 of this chapter (Site Plan and Architectural Approval) in that the applicant is required to submit plans to the City's Community Development Department for architectural and building permit review and approval as conditioned by this Conditional Use Permit. Compliance with all health and safety fire and building codes is mandatory.

Preliminary Grading Plan Findings:

- h. The proposed project described in the application will not have an appearance, due to the grading, excavation, or fill, substantially and negatively different from the existing natural appearance.
- i. The proposed project described in the application will not result in geologic or topographic instability on or near the site. A peer reviewed geotechnical evaluation of the site will be conducted and the proposed project will implement all geotechnical recommendations, as conditioned.
- j. The proposed project described in the application will not endanger public sewers, storm drains, watercourses, streets, street improvements, or other property; will not interfere with existing drainage courses; and will not result in debris being deposited on any public way. The applicant is required to submit a plan to control erosion and siltation during and after construction for review and approval by the City Engineer.
- k. The proposed development is located in a special seismic liquefaction study zone. A seismic study shall be prepared and peer reviewed by a City-selected consultant. Recommendations of that geotechnical study shall be implemented in the design and construction of the site and buildings.
- l. In compliance with the conditions of approval, the proposed project described in the application will not unacceptably affect the health, safety, and or welfare of adjacent residents or landowners, nor the citizens of Fremont.
- m. The development of the land is well defined because the proposed improvements would be reviewed by the City's Community Development Department to ensure conformity with the City of Fremont's applicable codes and policies.

CONDITIONS OF APPROVAL:

General Conditions (Must be satisfied on ongoing basis)

1. *Permitted Uses:* Approval of Conditional Use Permit Amendment PLN2009-00163 shall substantially comply with the site and building design shown on Exhibit "A", subject to compliance with all conditions included herein. The principal use of identified school buildings and facilities shall be for the school use. The maximum aggregate number of students enrolled cannot exceed 1,400. The existing religious use on the site may use school buildings and facilities when school is not in session so long as such activities are in keeping with the original approval of use permit U-82-11. The following list summarizes the approved phased master plan, including the new facilities for the school (Note: Phase I is mentioned in report but not a part of this CUP amendment):

Phase I: Sports Fields (presently under construction)

- School sports fields, new bleachers and sports netting
- New perimeter wall.

Phase II: Proposed Buildings A, and B (by year 2010)

- Buildings A (20,000 s.f.): a two-story building with 18 basic classrooms and large computer lab for Juniors/Seniors, restrooms, teachers lounge, office for athletic director.
- Building B (2,040 s.f.): a one-story building with a Juniors/Seniors music room.

Phase III: Proposed Buildings C and D (by year 2012 to 2015)

- Building C (10,560 s.f.): a two-story building with general classrooms, restrooms, and larger specialty rooms.
- Building D (9,600 s.f.): a two-story building with a large first floor all school (i.e., K-12), library with support rooms on second floor.

Phase IV: Proposed Building E (by year 2014-2017)

- Buildings E (29,300 s.f.): a two-story building with a future gymnasium, basketball court and bleachers for up 800 spectators, a large room for youth activities, a kitchen and other physical education activities on second floor.

Phase V: Proposed Building F (by year 2016-2019)

- Building F (23,040 s.f.): a two-story building for 18 elementary classrooms, choir room and small specialty rooms for remedial education.

All uses permitted for the site shall comply with the conditions of approval set forth herein. Unless modified by this approval, all permitted uses shall also comply with other applicable Fremont Municipal Code (FMC) requirements and all current building and fire code requirements. This Conditional Use Permit Amendment shall not affect any previously issued use permits for uses on the project site.

2. *Acknowledgement of Refinements for Each Phase:* The proposed project is proposed in phases. Subsequent designs of all buildings shall be in keeping with the architectural treatment of the first buildings approved in Phase II. Each phase shall be completed with full landscaping and

site improvements (e.g., landscaping, walkways, stormwater facilities, circulation and parking areas), functionally independent of subsequent phases. The applicant shall acknowledge and agree to reasonable enhancements or refinements to each phase at such time a building permit is requested. No exceptions to building and fire codes shall be permitted. Each phase of development must fully comply with the then fire and building codes in effect at the time a building permit is requested for that phase. In areas on the site that may have been disturbed where buildings are prematurely removed and development incurs unexpected delays, those areas shall be hydroseeded, or otherwise stabilized, in accordance with City erosion control requirements for that interim period.

3. *Issuance of CUP Certificates:* A Conditional Use Permit Certificate shall be issued for each phase upon completion of its construction.
4. *Completion of Master Plan:* Building permits for the entire master plan shall be secured in ten (10) years from the date of the Planning Commission's approval, on or before June 25, 2019. The Planning Director may approve an extension of time for a period of no greater than three (3) years to allow additional time for the development of the entire master plan (all phases) if s/he determines that the delays are caused by reasonable circumstances beyond the applicant's control. The Planning Director may take into consideration compliance with conditions of approval and other factors when s/he makes a determination in granting the extension. Additionally, the Planning Director may refer the matter back to the Planning Commission for further consideration.
5. *Approval of Minor Modifications:* Minor modifications to the Conditional Use Permit may be made subject to review and approval of the Planning Director or his/her designee if such modifications are in keeping with the intent of the original approval. The Planning Director, however, may refer any modification to the Planning Commission when s/he feels that the request is of such a nature that it warrants consideration by the Planning Commission.
6. *Addition of Safety Measures:* Should additional safety measures be needed in order to address any public safety and health concerns arising from the school's operation, including a student drop-off/pick-up program, the applicant shall provide those additional safety measures as requested by the City's Planning Director.
7. *Site and Stormwater Facilities Maintenance:* The following shall be implemented on an on-going basis:
 - a. The property owner is responsible for litter control and for sweeping of all paved surfaces. Sidewalks, parking lots, and other paved areas must be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry into the storm drain system. No cleaning agent may be discharged to the storm drain.
 - b. The developer shall comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES permit requirements issued by the State's Water Quality Control Board.

- c. All landscaping shall be properly maintained and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides, which can contribute to runoff pollution.
 - d. All on-site storm drains must be cleaned at least once a year immediately prior to the rainy season. Additional cleaning may be required by the City of Fremont. All on-site storm drains must be cleaned at least once a year immediately prior to the rainy season. Additional cleaning may be required by the City of Fremont.
 - e. Parking lot and building landscaping shall be maintained at all times in good, aesthetically pleasing condition.
8. *City's Right to Referral of Project to Planning Commission for Modification:* If the Planning Director finds evidence that Conditions of Approval have not been fulfilled or uses in operation at the site have resulted in a substantial adverse effect on the health, and/or general welfare of uses of adjacent or proximate property, or have a substantial adverse impact on the public facilities or service, the Director may refer this approval to the Planning Commission for review. If, upon such review, the Commission finds that any of the results stated above have occurred, the Commission may modify this approval or revoke it.
9. *Indemnification.* The operator and property owner of the site shall defend, indemnify, and hold harmless the city or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the city, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The city shall promptly notify the provider(s) of any such claim, action or proceeding. The city shall have the option of coordinating the defense. Nothing contained in this condition shall prohibit the city from participating in a defense of any claim, action, or proceeding if the city bears its own attorney's fees and costs, and the city defends the action in good faith.

Prior to Issuance of a Conditional Use Permit (Pre-Construction)

Building Design

The applicant shall work with staff to:

- 10. Reconsider application of the brick veneer to the mid-portion of the buildings on the second floor and increase the height of the brick veneer wainscot on the first floor.
- 11. Consider future conversion of Building A's south façade to a secondary school entrance if the two residential lots on Hansen Avenue are acquired by the School.
- 12. Explore the possibility of breaking up long wall expanses through any combination of change in material, color, addition of vertical expansion joints (vertical stucco scoring), varying wall planes, and/or adding vertical pilasters to walls.
- 13. All fire risers shall be concealed internally, except for those components as approved by the Fire Department.

Site Design

The applicant shall work with staff to:

14. Add a planter along the north side of the gym building (Building E) at the intersection of the two walkways to provide added visual interest.
15. Add two species of trees to the design for additional planting diversity.
16. Explore additional opportunities to reduce unnecessary pavement and add planting areas.
17. Provide additional seat walls to protect the planting areas and to allow for a variety of seating locations.

The following shall be incorporated or implemented in the design phase of the project:

18. A lighting plan, submitted in conjunction with a photometric plan, shall be subject to the review and approval of the Planning Division during the building permit review process. All lighting shall be architectural consistent with the design of the building. In compliance with the Fremont Municipal Code, lighting will be reviewed to avoid substantial light or glare that may have an impact on day or nighttime views in the area. All wall lighting fixtures or sconces shall be of high quality, decorative lighting fixtures with concealed lighting elements. All pole light locations shall be coordinated with the placement of trees to eliminate conflicts between the trees and lights and so that the light is not blocked by the growth of the trees.
19. This project must comply with Bay-Friendly Landscape City Council Resolution 2009-40, which requires all private development projects meet any seven (7) of the nine (9) basic required practices. Applicant shall complete and submit the City form titled "Bay-Friendly Basic Practices Checklist for Private Development" with the building permit review application.
20. Plants shall be selected so that minimal pruning is required to keep the plant in the space allotted. Plants shall be selected that are well adapted to the Fremont environs and that require only occasional irrigation once established.
21. Trees planted in stormwater treatment facilities shall be planted on pedestal of compacted native soil.
22. All planting areas containing trees shall be free of all Utility Structures (including light standards) and other built features.
23. The irrigation system shall be designed to conserve water per the "Turf and Landscape Irrigation Best Management Practices" handbook, by the Irrigation Association – Water Management Committee. A monthly irrigation water budget shall be provided as part of the design documentation package.
24. The following shall be implemented in the design of hardscape surfaces:

- a. Work with staff to finalize materials, colors and finish of the permeable pavers to be placed in the courtyard.
 - b. Explore reducing pavement and add more planting areas.
 - c. Locate additional areas to place seat walls.
25. The implementation of green building practices is strongly encouraged. The applicant shall work with staff to explore the possibility of implementing green building practices into the design of the proposed project. Site and building attributes shall be considered.
26. The applicant shall apply for and obtain an encroachment permit for all improvements within the public right-of-way and public service or utility easements. The encroachment permit shall be obtained prior to issuance of the building permit.
27. A grading permit shall be obtained. Final grading shall be in accordance with the Grading, Erosion, and Sediment Control Ordinance (Chapter 4, Title VIII of the Municipal Code). Grading shall be subject to the approval of the City Engineer.
28. Prior to issuance of a permit for land disturbance greater than one acre, the developer shall file a Notice of Intent with the State of California Water Resources Control Board and receive the State assigned WDID number. The developer shall provide a copy of the Storm Water Pollution Prevention Plan (SWPPP) for City review and maintain a copy on the job site.
29. Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed.
30. A disposal site for the off-site haul dirt materials or source for the import fill shall be approved by the City prior to the approval of the grading permit. The off-site haul truck route for the excess dirt or import fill shall be subject to the approval of the City Engineer.
31. The applicant shall submit a detailed geotechnical report. The report shall include recommendations regarding pavement sections. The project plans shall be designed in accordance with the required geotechnical report. Grading shall be supervised by an engineer registered in the State of California to do such work.
32. The minimum drainage slope in vegetated swales shall be 1.5%, when constructed with a subdrain system. Minimum 2% drainage slope shall be used if no subdrain is installed. Minimum requirements are subject to revision by the City Engineer upon receipt and review of soil drainage data from the project geotechnical engineer.
33. The project storm drain system shall conform to City standards and shall be subject to review and approval of the City Engineer and the Alameda County Flood Control and Water Conservation District. Drainage calculations shall be submitted with the grading and drainage plans for the project.

34. All new utility service connections, including electrical and communications, shall be installed underground. New electrical transformers should be installed in underground vaults within an appropriate utility easement or public service easement.
35. The property owner must enter into an agreement with the City of Fremont to operate and maintain, in perpetuity, the stormwater treatment measures for each phase of the project. The Stormwater Treatment Measures Maintenance Agreement (also called an Operations & Maintenance Agreement or O&M Agreement) is a legal document that is recorded against the title of the property. Responsibility for the Operation and Maintenance Agreement must be legally transferred to all subsequent property owners. The approved and notarized O&M Agreement must be received by the City prior to permit issuance or final map approval. Electronic versions of the template documents may be found at www.fremont.gov.
36. The provided Storm Water Control Plan is approved in concept only. Final approval is subject to the developer providing the necessary plans, details, and calculations that demonstrate the plan complies with the Alameda Countywide NPDES Municipal Stormwater Permit, subject to City Engineer approval prior to building permit issuance. The proposed stormwater treatment measures and required drainage system to support it shall be installed with each construction phase.
37. The Primary Treatment BMP Must Be Landscaped Based: Stormwater runoff from all impervious surface areas (100%) must be treated prior to entering the City storm drain system. At least 50% of the impervious surface area must be treated by landscape-based treatment measures.
38. Limitation on the Use of Hydrodynamic Separators (E.G. Vortex or Centrifugal separators): Hydrodynamic separators do not meet the criteria for stormwater treatment to the maximum extent practicable (MEP) when used as stand-alone treatment. Hydrodynamic separators may be used as part of an overall treatment train or BMP to meet MEP, provided that at least 50% of the site runoff is treated through landscape-based treatment measures.
39. Placement of Stormwater Treatment Measures: Private projects that are required to incorporate stormwater treatment measures to meet NPDES Provision C.3 requirements must place the treatment measures in a location accessible to City inspectors during regular working hours.
40. Construction Stormwater Best Management Practices: The construction phase of on- or off-site improvements, including grading work, requires stormwater pollution prevention plans and erosion control plans. The developer is responsible for ensuring that all contractors are aware of all stormwater best management practices (BMPs) and that such measures are implemented according to the approved plan. Failure to comply with the approved construction BMPs will result in the issuance of correction notices, citations, and/or stop orders. Refer to the Bay Area Stormwater Management Agency Association's (BASMAA) Blueprint for a Clean Bay and to the Erosion and Sediment Control Field Manual published by the Water Board for more information on construction BMPs.
41. Each phase of the project must function independently in regard to stormwater treatment, i.e., each phase of the project must incorporate appropriate source controls, site design and

stormwater treatment for the project phase. Over-sizing stormwater treatment measures in earlier phases to treat for later phases is permitted.

42. Each phase of the project must meet current National Pollutant Discharge Elimination System Requirements at the time the phase comes under project review.
43. Each phase of the project must include a completed and signed Impervious Surface Area, Stormwater Treatment and Hydromodification Measures form (ISF) with the permit application package. Project revisions and subsequent applications must include submittal of an updated ISF. The ISF may be may be downloaded at www.fremont.gov in the stormwater regulations section of Environmental Services.
44. Air conditioning condensate must be directed to landscaped areas or connected to the sanitary sewer system after obtaining permission from Union Sanitary District.
45. Food service facilities (i.e. the kitchen) must have a sink connected to the sanitary sewer system for cleaning floor mats, containers, and other equipment. The cleaning area must be large enough to clean the largest mat or piece of equipment to be cleaned. The cleaning area must be indoors or in a roofed area outdoors; both areas must be plumbed to the sanitary sewer. Design outdoor cleaning areas to prevent wash water or stormwater run-on and run-off from carrying pollutants to the storm drain system. The applicant must contact Union Sanitary District for specific connection and discharge requirements.
46. The applicant shall meet all requirements of the currently adopted edition of the California Building, Fire and City of Fremont Municipal Codes in effect at the time of building permit.
47. The applicant shall confirm that the planter #2 and the fencing for the athletic field will not interfere with fire access roadway between building E & F as shown on L1.2 of Exhibit "A."
48. An Emergency Vehicle Access Easements (EVAE) shall be recorded for the benefit of the City of Fremont by a separate instrument to the satisfaction of Fire Prevention Division.
49. The applicant shall provide a site plan/ civil utility plan with the location of public and on-site fire hydrants. Fire hydrant(s) shall be spaced at 300 feet intervals. The distance is measured as the fire engine travels on all weather surfaces. Fire hydrant head assemblies shall be a Clow Model 860 or equivalent.
50. Fire Department Connections for all sprinkler system must be located not more than 100 feet from a fire hydrant. N.F.P.A 14. All inlets shall have Knox brand type caps with a metal signs/address placards installed at the connection.
51. Fire flow for this site will be a minimum of 1750 gpm at 20 psi. Contact Jose Rodriguez with the Alameda County Water District at 510-668-4419 to obtain information.
52. Building addresses are to be plainly legible and visible for emergency response. These numbers shall contrast with their background.

53. The applicant shall have a key box (Knox brand) located outside of buildings/gates and provide keys to the Fire Department for mandatory emergency access. Vehicle gates shall use Knox lock or keyed over-ride switch. Gates shall also have an infrared receiver installed. Applications can be obtained at Fire Administration office, 3300 Capital Ave, Fremont, CA, phone # 510-494-4200.
54. The applicant shall install an N.F.P.A. 13 fire sprinkler system complying with local amendments.
55. Prior to installation, plans and specifications for the underground fire service line must be submitted to the City's Community Development Department for approval by the Fire department and Building department. The underground fire service requires either cathodic protection or a corrosion engineer's protection plan.
56. The applicant shall install a monitored fire alarm/sprinkler monitoring/ system as required. The system must comply with N.F.P.A. 72 and local ordinance #32-2007, as amended. A nationally recognized testing laboratory numbered certificate shall be provided at no cost to the City. Fire alarm systems alarms, supervisory and trouble signals shall be distinctly and descriptively different per City of Fremont Fire Alarm Standard 25A.
57. Separate permit is required for the underground fire service, fire sprinkler, standpipe system, fire alarm systems.
58. When buildings greater than 30 feet in height the building shall be located a minimum of 15 feet and a maximum of 30 feet from the fire department access roadway. The Fire Department access roadway shall be positioned parallel to the entire side of the building. A Fire Department access roadway serving structures 30 ft or less in height shall have a minimum 20 foot unobstructed linear width. A Fire Department driveway access serving structures over 30 ft in height shall have a minimum 26 foot unobstructed linear width. These driveways/access roads shall be designated as Fire Lanes. Driveway /access road shall meet Fire Department standards for surface type, distance, weight loads, turn radius, grades, and vertical clearance. Approved turnarounds shall be required for distances over 150 feet from public streets. Other mitigation's shall/may be required in addition to those listed. When the access roads do not accommodate the required width for parking then the applicant shall provide red curbs, curb lettering every 30 feet and fire lane signs every 100 feet. All Fire Department access roadway to be provided to within 150 ft of all exterior portions of the building.
59. Hazardous Materials Requirement: The applicant shall comply with the provisions of the permits required from any state or regional agencies, including, but not limited to, the Bay Area Air Quality Management District (BAAQMD), Regional Water Quality Control Board (RWQCB), Union Sanitary District's (USD) POTW and the Alameda County Department of Environmental Health.
60. Hazardous Materials Requirement: The applicant must immediately notify the Fremont Fire Department, Hazardous Materials Unit of any underground pipes, tanks or structures; any suspected or actual contaminated soils; or other environmental anomalies encountered during site

development activities. Any confirmed environmental liabilities will need to be remedied prior to proceeding with site development.

61. Garbage and recycling requirements are explained in the City of Fremont Waste Handling Guidelines document. Applicant will be responsible for incorporating these guidelines into the project. This information is available on the City's website at: www.fremont.gov/
62. A trash enclosure is required for all commercial and institutional facilities. Trash/recycling enclosure design and construction is described in the Waste Handling Guidelines document. Each phase of the project must provide sufficient trash enclosure storage space and meet the design guidelines in effect at the time the permit is issued. The enclosure must be large enough to contain garbage and recycling containers. It must be securable to keep unwanted personnel from accessing or inhabiting the structure and equipped with a gate or door that has the ability to be locked. The next set of submittals must include the dimensions of the existing trash enclosure.
63. Applicant must ensure adequate, accessible and convenient areas for collecting and loading of materials by the garbage and recycling trucks. There must be sufficient room for garbage collection vehicles to turn around or drive through on the drive paths.
64. Weekly municipal solid waste (MSW) collection service is required for all occupied commercial, residential and institutional properties, and is currently provided by Allied Waste Services (AWS) on an exclusive franchise basis.
65. Recyclables collection at commercial properties operates in a competitive environment and is open to any vendor authorized to do business in the City of Fremont.
66. Applicant shall comply with future requirements as they pertain to garbage and recycling.
67. The applicant must submit a City of Fremont Waste Handling Plan prior to beginning any demolition or construction. The Waste Handling Plan must be approved by the Environmental Services Division before permits are issued. Applicant should review the Builders' Guide to Reuse & Recycling booklet to help identify potential service providers and recycling facilities. <http://www.stopwaste.org/docs/buildersguide-05.pdf>

During Construction

68. A professional engineer, registered in the State of California, shall be retained to prepare the final grading plan. Upon completion of the grading, a letter shall be submitted to the City's Community Development Department that the as-built grading is in compliance with the approved grading plan.
69. The developer is responsible for ensuring that all contractors and subcontractors are aware of all storm water quality measures and implement such measures. Failure to comply with the approved construction Best Management Practices will result in the issuance of correction notices, citations, or stop orders.

70. The sediment and erosion control plan must be kept current to reflect grading changes and kept on-site and available for inspectors to review. Refer to the Bay Area Stormwater Management Agency Association's (BASMAA) Blueprint for a Clean Bay and to the Erosion and Sediment Control Field Manual published by the Water Board for more information on construction BMPs.
71. All public and private storm drain inlets must be stenciled "No Dumping Drains to Bay" with thermoplastic stencils purchased from the City's Community Development Department. Alternative inlet stencils or markings may be permitted, subject to approval by the City.
72. Prior to building occupancy or acceptance of improvements, the project civil engineer or landscape architect must submit a statement certifying that all post-construction stormwater treatment measures have been installed properly.
73. The contractor must provide a letter to the City of Fremont Environmental Services Division certifying that the soil used in landscape based treatment measures meets the intent of the specifications included in the most recent version of Alameda Countywide Clean Water Program's C.3 Stormwater Technical Guidance Manual. The letter must specifically address the requirement that the dewatering soils meet the percolate rate of 2 -10 inches per hour and treatment soils meet the percolate at a rate of 5 – 10 inches per hour.
74. Fire sprinkler test water shall be drained to the sanitary sewer system with approval from Union Sanitary District or drain to landscaped areas where feasible. The applicant shall contact Union Sanitary District for specific connection and discharge requirements.
75. The applicant shall provide fire hydrant(s) with the required fire flow on site prior to construction or storage of combustible materials. Fire hydrant jumper lines must be at least 6 inches in diameter. This must be completed and inspected before any construction or material storage will be allowed.
76. The applicant shall provide a 20 ft wide all weather-paving surface (paving) for emergency vehicle access within 150 feet of all construction or combustible storage. This access shall be provided before any construction or combustible storage will be allowed.
77. During the current phase of demolition and construction, 100% of the asphalt/concrete must be reused or recycled, and at least 50% of the remaining debris generated from the project must be reused or recycled.
78. During demolition and construction, the applicant may contract with any recycling company licensed to do business in Fremont for salvage or recycling of separated construction and demolition materials. Separated material destined for recycling may not contain more than 10% by weight of solid waste or other non-recyclable material (FMC IV, Ch 2, 4-2303).
79. Plant and tree debris must not be mixed with other wastes. Plant and tree debris from demolition and construction should be chipped on site or taken to a grinding/composting or fuel facility. It is now illegal to dispose of plant debris in an Alameda County landfill.

80. The contractor must ensure that trash (non-recyclable construction and demolition debris) is removed from the site during construction per the Fremont Municipal Code, by one or more of the following methods (FMC IV, Ch 2, 4-2300):
- a. Contacting the City's franchised waste hauler, Allied Waste Services, to arrange for use of debris box containers for all municipal solid waste to be landfilled.
 - b. Removal from the premises by the construction or demolition contractor, using their own equipment and vehicles, as part of a total construction, remodeling or demolition service offered by that contractor.
81. In subsequent phases of demolition and construction, the applicant will be required to meet the most recent standards in effect at the time the permit is issued, but at no time will the requirements be less restrictive than they are currently.
82. Construction hours shall be limited in accordance with Section 8-2205 of the Fremont Municipal Code, and notes to this effect shall be placed on the cover sheet of the construction plans and on an all-weather notice board (format and content specified by City) conspicuously placed adjacent to the most visible right of way for the duration of the construction activity as follows:
- a. Monday-Friday, 7 a.m. to 7 p.m.
 - b. Saturday & Holiday, 9 a.m. to 6 p.m.
 - c. Sunday, no construction activity allowed
83. Within 30 days of completion of the work, the applicant must file a Waste Disposal & Diversion Report documenting actual diversion and disposal of construction and demolition debris, along with the disposal receipts or weight tags. Copies of the Waste Handling Plan and the Waste Disposal & Diversion Report forms are attached in the Waste Handling Guidelines document.

Post Construction Final Occupancy Conditions (Must be satisfied prior to occupancy.)

84. The project architect and project engineer shall submit a letter to the City certifying that the buildings have been constructed in conformance with the approved architectural and structural development plans, subject to the review and approval of the City's Community Development.
85. The project landscape architect shall submit a letter to the City certifying that the on-site and streetscape (ROW) landscaping, if trees are ultimately proposed for Thornton Avenue, have been constructed in conformance with the approved landscape and irrigation plan, subject to the review and approval of the City's Community Development.
86. The City of Fremont must inspect and approve all stormwater treatment measures prior to granting certificate of occupancy. Thereafter, City staff must conduct inspections as frequently as annually to verify maintenance.

END OF CONDITIONS

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PLANNING COMMISSION STAFF REPORT JUNE 25, 2009

Project:	MCDONALD'S DRIVE THROUGH LANE - (PLN2009-00177)
Proposal:	To consider a Conditional Use Permit for a dual-lane drive-through facility for a restaurant. A Variance (section 8-22009(b)(2)) is also requested to reduce the required width of landscaping along the rear property line from ten-feet to eight-feet.
Recommendation:	Approve based findings subject to conditions.
Location:	40708 Grimmer Boulevard in the Irvington Planning Area. APN 525-1054-1-2 (See aerial photo next page)
Area:	3,898 square foot building on a 0.69-acre lot
People:	McDonald's USA, Applicant and Owner William Pernell, Agent of Applicant Charlie Brown, Architect, Vigen & Associates., Consultant Terry Wong, Staff Planner (510) 494-4456; twong@fremont.gov
Environmental Review:	This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15302, Replacement or Reconstruction of an existing structure.
General Plan:	Community Commercial
Zoning:	Community Commercial, Irvington Overlay District, C-C (I)

EXECUTIVE SUMMARY:

The Planning Commission is being asked to consider a Conditional Use Permit for a dual-lane drive-through facility for a new McDonald's restaurant that will reconfigure and replace an existing McDonald's restaurant with a single-lane drive-through facility. The existing General Plan and zoning of the site support a drive-through facility for restaurants. Staff recommends that the Planning Commission approve the project based on the findings and subject to conditions of approval.



Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES:

- North: Commercial
- South: Commercial
- East: Multi-Family Residential
- West: Commercial

BACKGROUND AND PREVIOUS ACTIONS:

McDonald's was established at this site as a permitted use without a drive-through lane in 1969. A drive-through lane was added to the site in 1983 with the approval of Conditional Use Permit U-83-9.

PROJECT DESCRIPTION:

The project consists of a Conditional Use Permit for dual drive-through lanes for a new McDonald's restaurant (a permitted use) that would reconfigure and replace an existing restaurant with a single drive-through lane. The applicant also requests a variance to reduce the width of a landscape planter located along the rear property line from ten-feet to eight-feet. The new building will be 3,898 square feet and would replace the existing 4,500 square foot building.

The applicant states that a dual-lane drive-through facility configuration will reduce the wait times and decrease the number of vehicles in queue because two orders can be taken simultaneously before they merge into one lane for payment at one window and picking up food at another window. The windows will be located on the northeast (Bay Street) side of the building. The drive-through facility will be open from 5 a.m. to midnight, similar to the hours of operation for the existing drive-through lane.

Currently, parking lot and drive-through traffic circulates in a clockwise direction around the rear half of the property, with a majority of the on-site parking spaces located at the front of the site, adjacent to Grimmer Boulevard. The new building's site plan orients the drive-through facility along the rear of the building; however, the drive-through facility continues toward the northeast side of the building, parallel to Bay Street. A landscaped island with shrubs and trees will separate the drive-through lane from the public sidewalk along both Bay Street and Grimmer Boulevard. The relocated parking lot will be located on the west side of the property, adjacent to the interior side yard. One existing driveway along Bay Street nearest Grimmer Boulevard will be eliminated in the new site plan.

PROJECT ANALYSIS:

General Plan Conformance:

The existing General Plan land use designation for the project site is Community Commercial. The proposed project is consistent with the existing General Plan land use designation for the project site because eating and drinking establishments are allowed uses. Drive-through facilities are allowed if they can be incorporated into the character of a pedestrian-oriented commercial center. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

Policy LU 2.14: A Community Commercial Center (CCC) should be a pedestrian oriented commercial environment. To maintain an active pedestrian environment, buildings oriented toward sidewalks or public plazas and walkways shall be strongly encouraged. Retail uses shall be encouraged at the ground level.

Analysis: Because the new building is required to be located close to the street (both Grimmer Boulevard and Bay Street), the building will have a strong street

presence with pedestrian orientation. A new sidewalk will connect the sidewalk with the new building. The drive-through facility will begin at the rear of the building and will terminate at the front of the building. The site plan emphasizes the building rather than the parking lot that will serve it; thereby, making the site more pedestrian-oriented. One existing driveway along Bay Street will be eliminated in the new site plan.

Irvington Concept Plan Conformance:

The Irvington Concept Plan refers to the subject site as Grimmer South, and states that commercial buildings be located at the street edge with parking located behind the buildings, rather than adjacent to the street. These concepts encourage pedestrian orientation and opportunities to window shop. The new building will be located closer to the street corner and the parking lot will be located at the side and rear of the building.

Zoning Regulations:

As set forth in Section 8-21103(i) of the Fremont Municipal Code (FMC), drive-through facilities are allowed in the C-C district subject to a subject to Planning Commission review and approval of a Conditional Use Permit in conformance with the applicable provisions included in Article 21.3.

Parking:

The site contains 25 parking stalls, including one van accessible stall, which is in conformance with the code requirements for a fast-food restaurant.

Design Analysis:

Site Planning:

The drive-through facility will still be located at the rear of the building; however, the new site plan will modify the existing drive-through facility by providing two vehicle lanes that will merge into one lane for payment and pick-up after drive-through customers place their orders. The purpose of the dual lane configuration is to make the drive-through facility more efficient by reducing the number of vehicles queued in the drive-through lane. The drive-through lanes will be substantially screened by landscaping.

Architecture:

The overall appearance of the new building is mid-century modern. The new structure has many design cues from the original McDonald's of the 1950's, such as integrated "golden arches", flared roof eaves, and decorative exterior wall tiles. The new building is complementary to buildings in the immediate vicinity. The building's design was selected because the applicant states this location is a higher volume store that warrants a distinctive architectural style that is reminiscent of the original McDonald's restaurants of the 1950's.

Open Space/Landscaping:

Three existing trees and vegetation on the site will be replaced with the construction of the building. The site will contain an ample number of trees (22) including Okalahoma red bud; white, pink, and lavender crape myrtles; and purple leaf plums; coast redwood trees; southern live oak; camphor; Italian stone pine; cedar; white chitalpa; Chinese pistache; flowering pear; red maple; ginkgo; bloodgood sycamore; Idaho locust. Twenty-five percent of the site will be occupied by landscaping as required by

the Fremont Municipal Code section 8-22137.5(f) including many drought tolerant shrubs and grasses, consistent with Bay-Friendly landscape guidelines.

Currently, the site has a three-foot landscape planter between the drive-through lane and the rear property line. In recent years, the required width of a landscape planter along an on-site driveway, adjacent to a residential use, was increased to ten feet. The applicant requests a variance to Section 8-22009(b)(2) to reduce the width of the required landscape planter along the rear property line from ten-feet to eight-feet. Because of the site's lot depth is relatively shallow for a commercial parcel, (200-feet), and because the planter abuts the adjacent apartment complex's parking lot, the depth of the landscape planter should be adequate and not result in any adverse impact on the adjacent use. The site complies with Section 8-22137.5(h) of the Fremont Municipal Code, as there is an existing six-foot tall masonry wall separating the apartment complex with the restaurant's driveway isle. The applicant shall work with staff on refining the planting plan to adjust to changes identified during the design process and to provide a solid vegetative screen along property line fencing.

This project will comply with Bay-Friendly Landscape City Council Resolution 2009-40, which requires all private development projects meet any seven (7) of the nine (9) basic required practices. The Bay-Friendly Landscape Program (BFL) is a holistic approach to landscape design and maintenance that works in harmony with the natural conditions of the SF Bay watershed. Landscapes developed with the program prioritize criteria such as local climate, soils and topography. The goal is to develop landscapes with greater local pest resistance, less maintenance, less use of resources, and less generated waste (caused by constant pruning). Plants will be selected so that minimal pruning is required to keep the plant in the space allotted. Plants shall be selected that are well adapted to the Fremont environs and that require only occasional irrigation once established.

Street Right-of-way Dedication and Improvements:

Existing street improvements have previously been installed on both Grimmer Boulevard and Bay Street. The applicant shall remove and replace the remaining driveways on both Grimmer Boulevard and Bay Street and the existing curb ramp at the southern corner of the Grimmer Boulevard and Bay Street intersection to meet current accessibility requirements. New tree wells will also be constructed within the sidewalk along both Grimmer Boulevard and Bay Street to facilitate the planting of new street trees. The developer will also be responsible for relocating all existing utilities that will be in conflict with new improvements, such as street lights and traffic signal pullboxes, and repair of damaged curb, gutter and sidewalk.

Circulation:

The site is bounded on the southeast by Grimmer Boulevard and on the northeast by Bay Street. Grimmer Boulevard is a divided arterial with two lanes and a shoulder in each direction. Bay Street is two-lane undivided collector road.

Access to the project site is from a single driveway on Grimmer Boulevard and two driveways on Bay Street. Due to the raised median on Grimmer Boulevard, right turns only are permitted in to and out of the driveway on Grimmer Boulevard. Access to the existing drive-through aisle is provided exclusively from the more southerly of the two driveways on Bay Street. The project proposes to close the northerly driveway on Bay Street and reconfigure the parking lot and drive-through circulation pattern to allow patrons to access the drive-through aisle from both Grimmer Boulevard and Bay Street. The reconfigured site plan will improve on-site vehicular circulation, as it will allow customers to access the

drive-through lanes from either Grimmer Boulevard or Bay Street. The existing drive-through lane can only be accessed from Bay Street.

Easements:

An eight-foot Public Utility Easement (PUE) exists along southeasterly boundary of the subject parcel, adjacent to an apartment complex). The project, as proposed, does not conflict with existing easements.

Grading & Drainage:

The project site is currently improved with an existing commercial building and associated parking areas. Grading for the project will include constructing a foundation pad for the new building, contouring the new parking and traffic circulation areas and installing multiple bioswales and bioretention planter areas for storm water treatment. The site drainage will remain similar to existing conditions.

Urban Runoff Clean Water Program:

The Alameda Countywide National Pollution Discharge Elimination System (NPDES) Municipal Stormwater Permit requires all new development to incorporate measures to prevent pollutants from being conveyed in storm water runoff and into the public storm drain system. This project is required to comply with the NPDES permit by incorporating treatment measures into the project's design.

The project intends to meet the quantitative storm water treatment requirements by constructing multiple bioswales and bioretention planter areas. In order to conform to the quantitative performance criteria of the Countywide NPDES permit, the project may be required to incorporate additional treatment control best management practices to treat storm water runoff. The storm water treatment design shall be integrated into the storm drain design for the project and shall be subject to review and approval of the City Engineer prior to building permit approval.

Geologic Hazards:

A portion of the project site is within an area of potential liquefaction on the official Seismic Hazard Zones, Niles Quadrangle map, released by the State Geologist on October 19, 2004. Prior to building permit approval, a site-specific seismic hazard study shall be completed by the applicant in accordance with the Seismic Hazard Mapping Act and approved by the City. The required report shall comply with guidelines established by the State Geologist.

Environmental Review:

This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15302, Replacement or Reconstruction of an existing structure.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 360 notices were mailed to owners and occupants of property within 300 feet of the site, as well as interested parties. The notices to owners and occupants were mailed on June 12, 2009. A Public Hearing Notice was published by *The Tri-City Voice* on June 10, 2009.

ENCLOSURES:

Exhibits:

- Exhibit "A" [Site Plan, Floor Plan, Elevations, and Landscape Plan](#)
Exhibit "B" [Findings and Conditions](#)

Informational Items:

1. [Project description](#)

RECOMMENDATION:

1. Hold public hearing.
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under 15302 because 15302, Replacement or Reconstruction of an existing structure.
3. Find the project is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use Chapter as enumerated within the staff report. The project also conforms to the goals, objectives, and policies of the Irvington Concept Plan.
4. Find the project, as shown on Exhibit "A" (site plan, floor plans, elevations, and landscape plan), fulfills the applicable requirements set forth in the Fremont Municipal Code.
5. Approve PLN2009-00177, a Conditional Use Permit as shown on Exhibit "A" Sheets 1 through 6 (site plan, landscape plan, floor plans and elevations), based upon the findings and subject to the conditions of approval set forth in Exhibit "B".

Existing Zoning

Shaded Area represents the Project Site



Existing General Plan

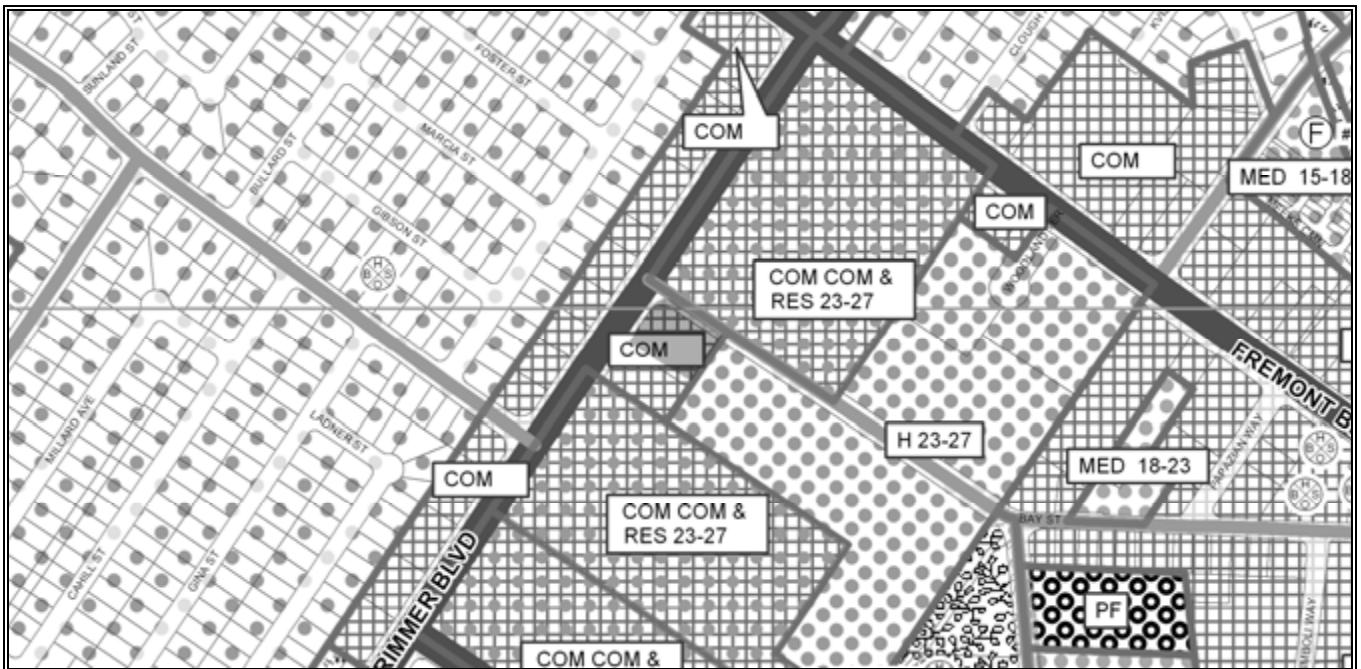


EXHIBIT "B"
Findings and Conditions of Approval
For PLN2009-00177, MCDONALD'S DRIVE-THROUGH LANE
McDonald's Conditional Use Permit
40708 Grimmer Boulevard

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated June 25, 2009, incorporated hereby.

Conditional Use Permit Findings for drive through facility:

- a. The proposed use is consistent with the general plan because a drive-through facility is an allowed use if it can be incorporated into the character of a pedestrian-oriented commercial center;
- b. The site is suitable and adequate for the proposed use because the drive-through lane will be primarily located at the rear and side of the restaurant and be screened with ample vegetation;
- c. The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services because a larger restaurant with a drive-through facility currently exists on the subject site;
- d. The proposed use would not have a substantial adverse economic effect on nearby uses because a drive-through facility currently exists on the subject site;
- e. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large because the drive-through facility was designed and located on the site to minimize impacts to the apartment complex located behind the subject site;

Variance Findings pertaining to rear yard landscaping:

- f. This variance shall be subject to such conditions that will assure that the adjustment hereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located because a two-foot reduction of landscaping from ten-feet to eight-feet along the rear property line is adequate because the parking area for the adjacent apartment complex is located closest to the rear driveway of the subject site, and will act as a buffer. The eight-foot landscape planter will be five-feet wider than the existing three-foot landscape planter.
- g. Because of special circumstances applicable to the subject property, including size, shape, and depth of the subject site, the strict application of the Ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications because the subject property will be better utilized if the required landscape planter width is reduced by two-feet. The total landscaping on the site still meets the 25 percent requirement per the Fremont Municipal Code for a business containing a drive-through facility.

- h. The conditions or situation of the specific piece of property or the intended use of the property for which the variance is sought is not of so general or recurrent a nature as to make reasonable/practical the formulation of a general regulation for such conditions or situations because in order to screen the entrance to the drive through facility, it was located at the rear of the building; thereby reducing the width of the landscaping behind it by two-feet.

CONDITIONS OF APPROVAL:

General Conditions

1. The approval of PLN2009-00177 shall conform to Exhibit "A" (Project Development Plans) and all the conditions of approval set forth herein. This approval permits a dual-lane drive-through facility for a restaurant that is approximately 3,898 square feet in size. This a project supercedes the prior Conditional Use Permit, U-83-9.
2. Compliance with all relevant provisions of the Fremont Municipal Code and State and federal law, and other regulations, standards and policies referenced therein.
3. In accordance with Section 8-22511 and 8-22512 of the Fremont Municipal Code (FMC), this conditional use permit approval shall expire if not used [as defined in FMC 8-22511(c)] within two year from the date of Planning Commission approval, and may be reviewed for possible revocation or modification by Planning Commission or City Council if any of the following conditions exist [per FMC 8-22512]:
 - a. Conditions of approval have not been fulfilled,
 - b. The use has resulted in a substantial adverse effect on the health and/or general welfare of users of adjacent or proximate property, and/or
 - c. The use has resulted in a substantial adverse impact on public facilities or services.
4. The drive-through facility shall be close by 12 a.m. (midnight) and shall not open earlier than 5 a.m.
5. The applicant shall submit their site development plans to the City through the Building Permit and Site Plan and Architectural Review.
6. Only the locations (not color, design, and material) of the signs shown on the exhibits are part of this approval. Prior to issuance of a sign permit, staff shall review all design of proposed signage for consistency with a Planned Signing Program (PSP).
7. The final design of the landscaping is subject to review and approval by the City's landscape architect.
8. Based on the existence of any future condition in which the drive-through queue consistently extends to the point of conflicting with onsite or off-site traffic so as to create a nuisance, such conflict shall be grounds for further review of the conditional use permit, which may lead to additional operational or site development modifications as necessary to resolve conflict.
9. The restaurant shall be equipped and maintained with a filter on the exhaust hood/vent to minimize food odors emitting from the kitchen.
10. Construction hours will be limited in accordance with Section 8-2205 of the Fremont Municipal Code, and notes to this effect shall be placed on the cover sheet of the construction plans and on

an all-weather notice board (format and content specified by City) conspicuously placed adjacent to the most visible right of way for the duration of the construction activity as follows:

- a. Monday-Friday, 7 a.m. to 7 p.m.
- b. Saturday & Holiday, 9 a.m. to 6 p.m.
- c. Sunday, no construction activity allowed

Legal Requirements/Agreements/Deed Restrictions

11. The applicant shall defend, indemnify, and hold harmless the City or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the City, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul the approval of the project when such claim or action is brought within the time period provided for in applicable state and /or local statutes. The City shall have the option of coordinating the defense. Nothing contained in this condition shall prohibit the City from participating in a defense of any claim, action, or proceeding if the City bears its own attorney's fees and costs, and the City defends the action in good faith. Covenants, Conditions and Restrictions (CC&Rs)

Special Project Conditions

12. The applicant shall explore the possibilities of incorporating technologies and practices of green building, using recycled content material, reuse of materials, waste reduction, and among others.

Prior to Issuance of Building Permits (Plan Details and/or Modifications Required)

13. Streets, Right-of-Way and Utilities or Public Improvements
14. The applicant shall apply for and obtain a City of Fremont encroachment permit for all improvements within the public right-of-way. All encroachment permits shall be obtained prior to issuance of the building permit.
15. The developer shall remove and replace the existing driveways on Grimmer Boulevard and Bay Street to meet current accessibility requirements.
16. The developer shall remove and replace the existing curb ramp at the northerly corner of the Grimmer Boulevard and Bay Street intersection to meet current accessibility requirements.
17. Additional street improvements shall include but are not limited to removal of existing northerly driveway on Bay Street and construction of replacement curb, gutter and sidewalk; construction of new tree wells on both Grimmer Boulevard and Bay Street; repair of damaged sidewalk, curb and gutter; relocation of existing utilities that conflict with new improvements such as street lights and utility boxes; and the installation of street trees.
18. A six-foot (6') wide public service easement (PSE) shall be dedicated along the Grimmer Boulevard and Bay Street frontages of the project site.
19. Call for installation of "No Stopping Fire Lane" (R26F) signs and post on main drive aisle off Bay Street driveway for the outbound and inbound directions. The first R26F sign should face

the outbound direction of traffic and be located approximately 75' from the driveway behind curb face. The second sign facing the inbound direct should be posted on first street light pole to the right.

20. Modify note 33 to include the following information: (1) For the R26F sign (No stopping Anytime) add text at the bottom of the sign which reads "CVC 22500.1"; (2) Modify the second sentence to read as follows: Paint curb red, include text with white lettering reading "No Stopping Fire Lane". Text shall be a minimum of four inches tall and shall be placed every 30 feet or portion thereof, on top of red curbing or red striping.
21. Include note in the site plan that all striping shall conform to 2006 CA Manual Uniform Traffic Control Devices, City Standard Details and Caltrans Standard Plans & Specifications and project specific striping and signing.
22. Bicycle parking racks shall be the inverted U bicycle racks.
23. Work that will encroach within the City ROW that will impede vehicle or pedestrian travel shall require prior submittal of a traffic control plan to the Transportation Division.
24. Parking stall striping shall have single line striping that conforms to FMC Section 8-22009(g).
25. Install drive through entrance signs at the drive aisle entry.
26. At the drive through exit, install "Do Not Enter" sign and paint outbound pavement arrow legend.

Prior to Issuance of Building Permits (Plan Details and/or Modifications Required)

27. The applicant shall provide an erosion control plan, as part of the project plans, subject to review and approval by the City Engineer.
28. The applicant shall submit a detailed geotechnical report. The report shall include recommendations regarding pavement sections. The project plans shall be designed in accordance with the required geotechnical report. Grading shall be supervised by an engineer registered in the State of California to do such work.
29. The project storm drain system shall conform to City standards and shall be subject to review and approval of the City Engineer. Drainage calculations shall be submitted with the grading and drainage plans for the project.
30. Proposed curb elevations shall not be less than 1.25 feet above the hydraulic grade line (design water surface) and at no point should the curb grade be below the energy grade line. On-site grates are to be a minimum of 0.75 feet above the hydraulic grade line.
31. The provided stormwater treatment plan is approved in concept only. Final approval is subject to the applicant providing the necessary plans, details, and calculations that demonstrate the plan

complies with the Alameda Countywide NPDES Municipal Stormwater Permit, subject to City Engineer approval prior to issuance of building permits.

32. All utility and fire appurtenances, meters and risers shall be concealed or screened from view by materials of a design and composition compatible with the architectural treatment of the project. Proposed utility closets shall be sufficient in size to accommodate the necessary utilities.
33. The applicant shall submit a lighting plan and a photometric plan, for review and approval by the Planning Director. All lighting shall be architectural consistent with the design of the building. All lighting fixtures or sconces shall be tamper resistant, high quality, decorative fixtures with concealed lighting elements. All pole light locations shall be coordinated with the placement of trees to eliminate conflicts between the trees and lights and so that the light is not blocked by the growth of the trees. The photometric plan shall identify the average illumination and the maximum light intensity throughout the site. In accordance with the Fremont Municipal Code, lighting shall be designed to avoid substantial light or glare from having an impact on the surrounding developments. Lights shall have sufficient illumination and shall be spacing to provide a minimum maintained foot-candle level of 0.12 and a maximum of 5. Exterior lighting shall be either metal halide or high pressure sodium, with maximum pole height limited of 20 feet.
34. All tree wells shall be a minimum dimension of 5' by 8'. The tree well locations shall be carefully coordinated with utility locations to eliminate conflicts between the trees and utilities.
35. The project must comply with Bay-Friendly Landscape City Council Resolution 2009-40, which requires all private development projects meet any seven (7) of the nine (9) basic required practices. Applicant shall complete and submit the City form titled "Bay-Friendly Basic Practices Checklist for Private Development" with the building permit review application. Plants shall be selected so that minimal pruning is required to keep the plant in the space allotted. Plants shall be selected that are well adapted to the Fremont environs and that require only occasional irrigation once established.
36. The applicant shall work with staff on refining the planting plan to adjust to changes identified during the design process and to provide a solid vegetative screen along property line fencing.
37. Trees planted in stormwater treatment facilities shall be planted on pedestal of compacted native soil.
38. All planting areas containing trees shall be free of all Utility Structures (including light standards) and other built features.
39. The Irrigation system shall be designed to conserve water per the "Turf and Landscape Irrigation Best Management Practices Handbook", by the Irrigation Association – Water Management Committee. A monthly irrigation water budget shall be provided as part of the design documentation package.
40. Street trees along Grimmer Boulevard shall be Bloodgood London Plane trees, *Platanus acerifolia* 'Bloodgood'. The trees located along Bay Street shall be Jacaranda, *Jacaranda mimosifolia*. All Street trees shall be a minimum 24" box size and will be subject to the review

and approval of the City's Urban Landscape Supervisor. Irrigation for Street trees shall be connected to the project irrigation system.

41. Garbage and recycling requirements are discussed in the City of Fremont *Waste Handling Guidelines* document. Applicant will be responsible for incorporating these guidelines into the project. This information is available on the City's website at: www.fremont.gov
42. Trash/recycling enclosure design and construction is described in the *Waste Handling Guidelines* document. The proposed size (14' x 13') trash enclosure must have a roof and a connection to the sanitary sewer. The trash enclosure should be large enough to store garbage, recycling and tallow containers. The enclosure must be equipped with a gate or door that has the ability to be locked to keep unwanted personnel from accessing or inhabiting the structure. The trash enclosure requires review from the Union Sanitary District and the Alameda County Health Department, who may require a hot/cold water faucet in the enclosure.
43. Consider the long- and short-term benefits of Green Building features, including energy efficiency, water conservation, and recycled-content building materials in the design. Visit StopWaste.Org and click on the Green Building tab for a project checklist for small commercial green buildings.

DEMOLITION/CONSTRUCTION STAGE:

44. 100% of the asphalt/concrete must be reused or recycled, and at least 50% of the remaining debris generated from both the demolition and construction phases must be reused or recycled. Applicant should review the *Builders' Guide to Reuse & Recycling* booklet to help identify potential service providers and recycling facilities. <http://www.stopwaste.org/docs/buildersguide-05.pdf>
45. The applicant must submit a City of Fremont *Waste Handling Plan* prior to beginning any demolition or construction. The *Waste Handling Plan* must be approved by Environmental Services before any permits are issued.
46. The applicant may contract with any recycling company licensed to do business in Fremont for salvage or recycling of separated construction and demolition materials. Separated material destined for recycling may not contain more than 10% by weight of solid waste or other non-recyclable material (FMC IV, Ch 2, 4-2303).
47. Plant and tree debris should not be mixed with other wastes. Plant and tree debris should be chipped on site or taken to a grinding, composting or fuel facility. It is now illegal to dispose of plant debris in an Alameda County landfill.
48. The contractor must ensure that trash (non-recyclable construction and demolition debris) is removed from the site per the Fremont Municipal Code, by one or more of the following ways (FMC IV, Ch 2, 4-2300):

- a. Contacting the City's franchised waste hauler, Allied Waste Services, to arrange for use of debris box containers for all municipal solid waste to be landfilled;
 - b. Removal from the premises by the construction or demolition contractor, using their own equipment and vehicles, as part of a total construction, remodeling or demolition service offered by that contractor.
49. Within 30 days of completion of the work, the applicant must file a *Waste Disposal & Diversion Report* documenting actual diversion and disposal of construction and demolition debris, along with receipts or weight tags. Copies of the *Waste Handling Plan* and the *Waste Disposal & Diversion Report* forms are attached in the Waste Handling Guidelines document.

Requirements to be Completed Prior to Request for Final Inspection

50. Prior to release of building for occupancy, the Project Landscape Architect will submit a letter to the City of Fremont certifying the planting and irrigation have been installed in conformance with the approved planting and irrigation plans, subject to the review and approval of the City Landscape Architect.

Ongoing Operational Requirements

51. Municipal solid waste (MSW) collection service is required for all occupied commercial properties, and is provided by Allied Waste Services (AWS) on an exclusive franchise basis.
52. Recyclables collection at commercial properties operates in a competitive environment and is open to any vendor authorized to do business in the City of Fremont.

END OF CONDITIONS



PLANNING COMMISSION STAFF REPORT JUNE 25, 2009

Project:	MAIN STREET VILLAGE (PLN2009-0153)
Proposal:	General Plan Amendment to change the land use designation from Medium Density Residential (15-18 dwelling units per acre) to High Density Residential (27-35 dwelling units per acre), a Rezoning from Planned District (P-84-12) to Multi-Family Residence District (R-3-35), Site Plan and Architectural Review and Preliminary Grading Permit to develop a 1.6-acre site with a residential project including 64-units and a Conditional Use Permit to allow 3,400 square feet of ground floor office space within the project.
Recommendation:	Recommend to City Council
Location:	3615/3657 Main Street and 41045/41053 High Street in the Irvington Planning Area. APN's: 525-0641-005-00, 525-0641-006-00, 525-0641-008-00, 525-0641-011-00, 525-0641-012-00, and 525-0641-013- (See aerial photo next page)
Area:	69,696 square foot (1.6-acre) vacant lot
People:	Allied Housing, Applicant Jon White, Allied Housing, Agent of Applicant Mid-Peninsula Housing Coalition, Agent of Applicant Eric Girod, BKF Engineers, Civil Engineer Susan Vutz & Helen Degenhardt, JSWD Architects, Architects Charles M. McCulloch, Landscape Architect Wayne Morris and Susan Summerford, Staff Planners (510) 494-4729; wmorris@fremont.gov ; ssummerford@fremont.gov
Environmental Review:	A Mitigated Negative Declaration has been prepared and circulated for this project.
General Plan:	Existing: Residential Medium 15 to 18 Dwelling Units per Acre (du/ac) Proposed: Residential High 27 to 35 Dwelling Units per Acre (du/ac)
Zoning:	Existing: P-84-12, Planned District (Approved for 24 residential townhomes) Proposed: Multi-family Residence, R-3-35

EXECUTIVE SUMMARY:

The proposed project consists of a General Plan Amendment, a rezoning to R-3-35, a Conditional Use Permit, Site Plan & Architectural Review, and a Preliminary Grading Plan, to permit the development of a 1.6 acre site with 63 affordable units, 1 caretakers' unit and 3,400 square feet of ground floor office space for Abode Services, the parent organization for Allied Housing, the property owner. No buildings or structures are currently located on the subject lands. The project proposed by Allied Housing is to develop housing for very low and extremely low income individuals and households. Staff recommends that the Commission recommend the City Council adopt and approve the requested entitlements and Mitigated Negative Declaration as shown in Exhibits "B", "C", and "D" subject to the findings and conditions in Exhibit "E".

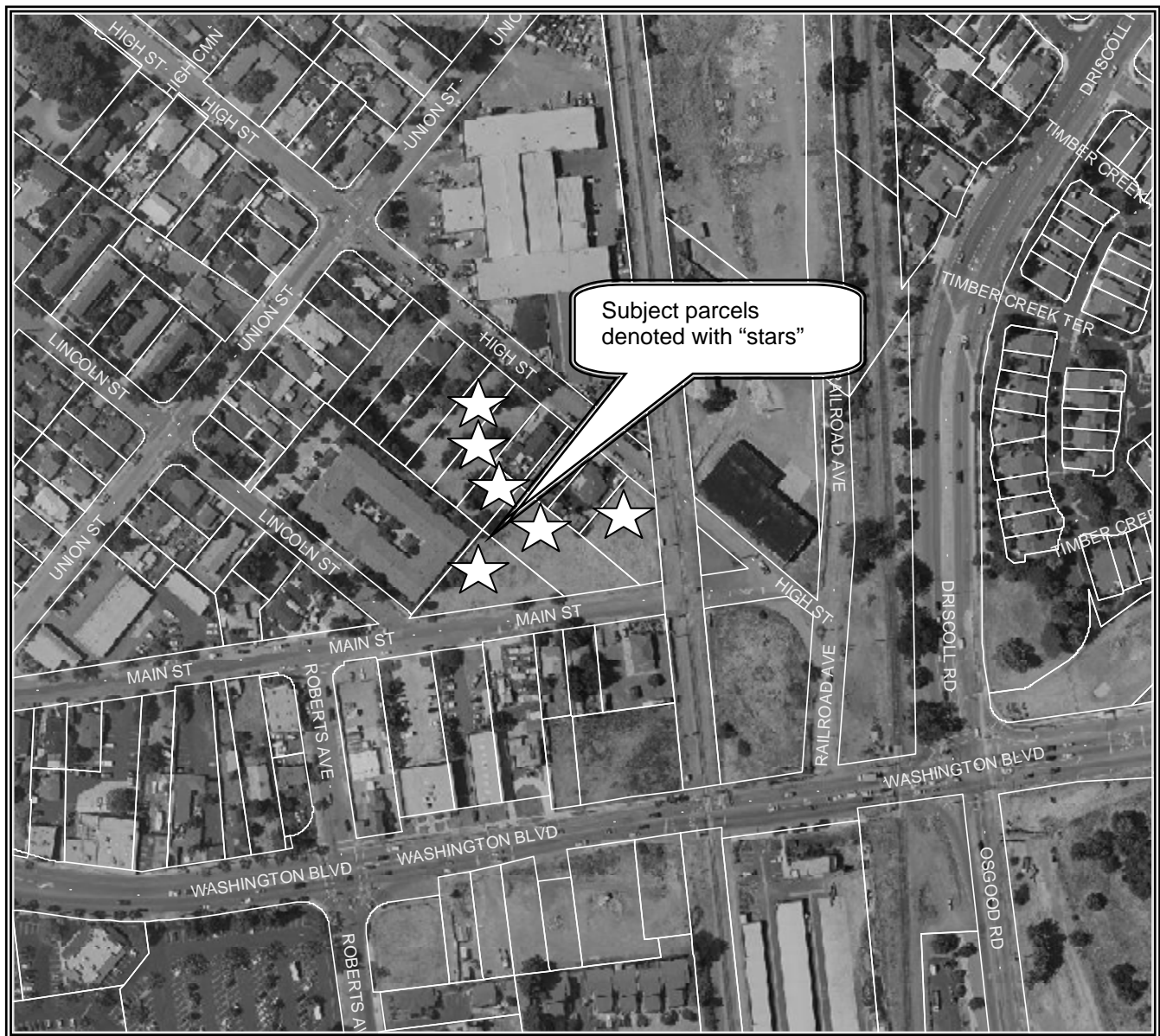


Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES:

- North: Residential and Light Industrial uses
- South: Residential and Service commercial uses
- East: Vacant land entitled for multi-family residential
- West: Senior assisted living facility and residential uses

BACKGROUND AND PREVIOUS ACTIONS:

The current zoning of the subject the site is P-84-12, a Planned District development that was approved by the Fremont City Council on February 26, 1985. The approved proposal was for 24 townhomes and was never acted upon. The land was vacant at the time of the Planned District approval and remains vacant.

The Agency Board approved in concept the acquisition funding for the site in July 2008, and formalized the approval in October 2008. The applicant submitted a conceptual site plan and application materials in January 2009 and staff began reviewing the proposal. In April of 2009, the applicant became aware that the typical federal funding streams available to projects of this nature were going to be offered only once, rather than the normal offering of two annually. Therefore, the timeline for the project became compressed to have all land use approvals, environmental documents and appeal periods completed by the federal deadline of August 17, 2009. In addition to having only one round of funding this year, more significantly to the proposed project, the specific Federal Stimulus funds sought include preferences given for proposals that include special needs projects, which the current proposal does; as well as an offer of guaranteed minimum funding levels in the form of federal funds investment should the project not find outside investors. These factors are contributing to the time constraints identified for the project to receive entitlement prior to the federal deadline, as the aforementioned incentives are not likely to be repeated in future funding streams. Staff has scheduled this project to be reviewed by City Council on July 14, 2009. Both the applicant team and staff have worked in concert diligently to achieve this ambitious goal.

Additionally, the Bay Area Council Economic Institute published a Final Report entitled “Bay Area Economic Recovery Workplan.” The Main Street Village project is mentioned by name under Chapter V-Housing. It is one of two affordable housing projects listed under the “Strategic Projects for Housing” section of this chapter. As such, the project is receiving regional and national recognition for its’ contribution to the affordable housing stock in the area, as well as aiding the nine-county bay area association with qualification for and allocation of federal stimulus monies under the American Recovery and Reinvestment Act of 2009.

PROJECT DESCRIPTION:

The proposed project consists of a General Plan Amendment, Density Bonus, a rezoning to R-3-35, a Conditional Use Permit, Site Plan & Architectural Review, in conjunction with a Preliminary Grading Plan for the development of two primarily residential buildings, one being two stories and the other three stories in height. The applicants description of the proposed project is enclosed (Informational Item #5).

Proposed Project Includes:

- 63 dwelling units for the very-low and extremely low income households (totaling approximately 95,809 square feet at a density of 40 units per acre with a density bonus) with 17 studio units, 17 one-bedroom units, 20 two-bedroom units and 10 three-bedroom units.
- 3,400 square feet of ground floor office space.

- 59 on-site parking spaces will be provided (53 – sub-terrain parking garage and 6 at grade parking spaces).
- The parking garage will be accessed off of Main Street. Access will also be provided off High Street near Building Two for the at grade parking. Circulation through the site will only be permitted for emergency vehicles.
- Approximately 18,700 square feet of common area is proposed, including a community room, laundry room, maintenance workshop and main open space area in the middle of the development.
- Each unit has 100 square feet of storage space off of the balconies and patios.

PROJECT ANALYSIS:

Summary of Further Project Considerations and Unresolved Issues:

Garbage truck access:	As proposed, the site design, circulation and trash enclosure locations do not allow for the waste collection company to have adequate access to the trash areas. Staff is working with Allied Waste and the applicant to resolve the issue to the benefit and satisfaction of all. (Condition #34)
Additional accessible parking and path of travel:	The subterranean garage currently proposes to park 59 cars, one of which is an accessible space. However, Building Code requires that two spaces for every 25 spaces provided be accessible. Therefore, staff will work with the applicant to revise the parking configuration in the subterranean garage. As well, the plans need to clearly show the accessible path of travel from Building Two to Building One.
Enhanced architecture:	The proposed architecture, materials and color palette of the buildings, while acceptable and functional are still being worked on, but the overall architectural statement of the building will not change. The applicant shall work with City staff to develop a cohesive look for the development of this site, with particular attention paid to the corner of Main and High Streets. The implementation of the Irvington Concept Plan shall guide the process, as well as a paramount interest in preserving and enhancing the existing neighborhood. In addition, there may be some additional Fire Department concerns relating to the building overhangs and/or the proposed stairways in Building Two.

General Plan Conformance:

The proposed General Plan Amendment from Medium Density Residential (15 to 18 dwelling units per acre) to High Density Residential (27 to 35 dwelling units per acre) for the 1.6 acre project site is consistent with the General Plan policies and goals outlined below:

Housing Goal 3: *Housing affordable and appropriate for a variety of Fremont households at all economic levels throughout the City.*

Analysis: The project implements this goal in that the proposed development would allow for the construction of 63 dwelling units for very low and extremely low incomes households. It should also be noted that the rental price for these units would be restricted by agreements.

Policy LU 1.1: *Residential use is the primarily allowed use in a residential designated area. The type of residential use depends on the permitted density and other criteria to protect neighborhood character and the safety and welfare of residents.*

Analysis: The current underlying General Plan land use designation for the entire project site is Medium Density Residential, 15 to 18 dwelling units per acre, whereas the Amendment would redesignate the lands to a High Density Residential, 27 to 35 dwelling units per acre designation. The increase in density will facilitate an additional 34 dwelling units, above which would be allowed under the current designation. The applicant recognized early on in the process that in order to achieve the desired density for 64 units that sub-terrain parking would be necessary due to the parcel size and configuration. Staff has worked with the applicant to ensure the proposed project utilizes a design that preserves the surrounding residential units while also incorporating the principles of the Irvington Concept Plan. Through the development of appropriate transitions (e.g. by building setback, massing, height limitations, open space areas etc.), the applicant proposes an increase in density while limiting the impacts to the existing surrounding neighborhood.

Policy LU 1.12: *To the maximum extent feasible, play areas and open spaces shall be located to avoid conflict between residents attempting to reach these facilities and vehicular traffic.*

Analysis: The applicant is proposing 14,365 square feet of open space area in the center of the development as the main outdoor activity area for the project. This open space area is to include such amenities as a rubberized play area, two small sports courts, basketball hoop, and a couple of small lawn areas. Access to the open space area occurs via delineated pathways from both buildings, creating safe pedestrian access.

Irvington Concept Plan Conformance:

The Irvington Concept Plan addresses the area of the proposed development in that the Main Street streetscape is envisioned to develop promoting pedestrian-friendly sidewalks and urban style building configurations. Landscaping and sidewalk bulb outs are intended to assist in the development of a “main street” look to future projects located in this area. The future BART station in Irvington will aid in the revitalization of the area being more in use as pedestrian thoroughfare, and will allow retail type businesses to locate here. Currently, the area is more of a service-oriented business location. The proposed project includes a service business on the ground floor. The sidewalks proposed as part of this development are 12 feet in width with bulb outs at the corners of the Main Street frontage. There is no building setback for the Main Street Building One, and the 12 foot sidewalks extend around the corner, where they taper off at the existing residential homes on High Street.

Redevelopment Plan Conformance:

The proposed project is located within the Irvington Redevelopment Area. The project is consistent with the Irvington Redevelopment Plan General Goal #4 which cites “the creation of residential opportunities for various segments of the community, including the provision of quality affordable housing within and outside the Project Area.” Therefore, this General Goal will be met by developing the project as proposed.

Zoning Regulations:

As set forth in Section 8-2751.1 of the Fremont Municipal Code (FMC), multi-family residential developments are allowed in the proposed R-3-35 district subject to a rezoning. The current zoning, P-84-12, allows the site to be developed with 24 townhomes. The R-3-35 zoning designation allows for flexibility and exceptions for general lot and siting standards through the Site Plan and Architectural Review process when the approving body can find that the intent of a certain standard can be met through alternative means, except where the provision is already permitted based on the proposal of an affordable housing project. Essentially, the prescribed standards are only intended to provide certainty to property owners, developers, and neighbors about limits of what is generally allowed. In general, the project complies with the standards and guidelines, with some exceptions due to site constraints.

The table below outlines the R-3-35 development standards and how the proposed project is either in conformance or deviates from those requirements.

Type of Standard	Permitted	As Proposed
Maximum Building Height	52 feet	Building One: 34 feet, 7 inches high Building Two: 30 feet high
Minimum Lot Size	6,000 square feet	69,696 square feet (1.6-acre)
Minimum Lot Width	60 feet	83 feet (at narrowest point)
Street Frontage	35 feet	Main Street frontage: 362 feet wide High Street frontage: 74 feet wide
Front Setback	20 feet, but may be reduced when the reduction fosters a pedestrian-oriented environment or neighborhood setting for the area.	0 feet: per the Irvington Concept Plan which envisions Main Street residential buildings to be setback only to allow for stoops, porches or other street interactions for the front doors.
Interior and Rear Setbacks	10 feet	10 feet rear setbacks in all areas on site except for two: 6 feet along the western boundary adjacent to Lincoln Avenue to facilitate the drive aisle and subterranean garage entrance; and 5 feet 6 inches along the southern boundary adjacent to the at-grade parking that abuts the existing single family residential home fronting on High Street and is separated from that home by a 6 foot masonry block wall.
Lot Coverage	50 percent; Affordable project: 70 percent	36 percent
Minimum Common Open Space Area	500 square feet for up to 5 units, plus 50 square feet for each additional unit; one dimension at least 15 feet; Affordable project: 500 square feet for up to 5 units plus 25 square feet for each additional unit.	14,365 square feet (500 + 1,475 = 1,975 square feet required for affordable project) Exceeds requirement by 12,390 square feet.

Minimum Private Open Space Area	Balconies: minimum 60 square feet, the least interior dimension 6 feet; Patos: minimum 100 square feet, the least interior dimension of 10 feet.	Balconies: Average of 132 square feet each (25 balconies total) Patos: Average of 137 square feet each (10 patios total)
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Exception requested under the R-3 Standards:

Side yard encroachments: The applicant is requesting a deviation to the general 10-foot setback that is required from the interior lot line for the development of the drive aisle proposed on the western boundary of the site, and is proposing a 6 foot setback for approximately 100 linear feet as the 26 foot wide drive aisle progresses to the interior of the site. The adjacent use is a senior assisted living facility that has an approximately 15 foot setback from the shared property line and is buffered from the subject site by an existing 5 foot masonry wall. Staff supports this exception, as the odd shape of the lot dictates the design to a certain degree and the desire for a unified building frontage along Main Street is facilitated by this reduced setback.

The applicant is also requesting a deviation to the 10-foot setback for the interior lot line on the southern boundary of the shared property line with the existing single family home on High Street to allow for three at grade parking spaces. At present, the applicant is only proposing six at grade parking spaces, all of which are intended to serve Building Two, as Building One has the subterranean garage. The driveway of the adjacent neighbor abuts this area, and is separated from the proposed parking spaces by a proposed six foot tall masonry wall. Staff supports this exception to facilitate more at grade parking and due to the proposal for a masonry wall.

The R-3 zoning designation conditionally permits uses that are permitted or conditionally permitted in either neighborhood commercial or office commercial zones, provided the use is located on the first floor of a multi-family residential building that is three stories or taller and located on a parkway, arterial or collector street. A component of the project is the inclusion of a 3,400 square foot office space on the ground floor of Building One at the corner of High and Main for Abode Services, the parent organization for Allied Housing, the property owner. This space will be designated as administrative offices and headquarters for this organization.

Density Bonus Ordinance: In January 2003, the provisions of State law regarding Density Bonus were amended (Assembly Bill 1866). In response to this amendment, in September of 2003, the City Council adopted a Density Bonus Ordinance and an Affordable Housing Incentives Ordinance for consistency with State law and to implement Housing Element Program 12 and Land Use Element Policy LU-1.6. The purpose of the Density Bonus and Affordable Housing Incentives Ordinance is to provide developers with a density bonus of 25 percent over the maximum permitted density and additional incentives or concessions (e.g. exceptions) to the general development standards, making the development of a residential project more economically feasible and to encourage the production of affordable housing units in the City. To be considered for a density bonus and the additional incentives or concessions, the developer must agree to all the regulations set forth in State law and the Ordinance, such as a “Density Bonus Housing Agreement” to ensure that the target units remain affordable for at least a specified time duration (depending on type of housing proposed, rental or for-sale units).

Additionally, the developer must propose a project involving five or more units and must agree to provide the following:

- 20% of units to lower income households; or
- 10% of units to very low income households; or
- 20% of units to moderate income households as part of a newly constructed condominium project; or
- 33% of units to low or moderate income households within a condominium conversion project; or
- 15% of units to lower income households within a condominium conversion project; or
- 50% of units as Senior Citizen Housing.

State law and the Ordinance provides that a minimum of a 25% Density Bonus is required to be granted on top of maximum density allowed for a given site and that fractions of units are rounded up. A Density Bonus of greater than 25% is treated as an additional incentive. No General Plan or zoning changes are needed to allow for increased density.

The Density Bonus Ordinance not only provides a housing developer with a Density Bonus of 25% over the maximum permitted density, it also provides incentives or concessions for the production of housing for very low, lower income households, senior households or moderate income households, including condominium projects. “Additional incentives or concessions” means such “regulatory concessions as specified in the California Government Code, which includes, but is not limited to, an additional density bonus, reduction of site development standards or zoning code requirements, direct financial assistance, approval of mixed use zoning in conjunction with the housing development, or any other regulatory incentive which would result in identifiable cost avoidance or reductions that are offered in addition to the Density Bonus”.

The proposed project exceeds the minimum requirements set forth in State law and the Ordinance for the consideration of a Density Bonus of 25% over the maximum permitted density. The 25 percent Density Bonus over the maximum permitted density on the site (maximum 35 dwelling units per acre, with the proposed General Plan Amendment) would allow the development of 64 units on the 1.6-acre site, where otherwise a maximum of 53 units would only be permitted.

Although only 10 percent is required to be dedicated to very-low affordable housing units, the proposed project is in excess of the 10 percent for very-low and/or extremely-low income households. The applicant also has agreed to enter into a 55-year binding Housing Agreement with the City for the City’s affordable unit count (Condition #13). Under the City’s Density Bonus Ordinance, a longer period of time may be specified due to the construction/mortgage financing assistance program sought (the minimum duration would be 10 years for a “Condominium project” and 30 years for all other “housing developments”).

Parking:

The aforementioned zoning setback deviations could be considered a concession, allowable under the Density Bonus, as well as the proposed parking reduction. The project proposes a subterranean garage with access from Main Street to provide 53 parking spaces, including 36 standard spaces, 16 compact spaces and one accessible space. An additional six parking spaces, including one accessible space will be provided at grade with access from High Street. The total onsite parking proposed for the project is 59 parking spaces. Bike parking for eight bikes is provided adjacent to Building Two. Staff is working

with the applicant to find other locations on-site that may be utilized for additional bicycle parking. (Condition #23)

The City of Fremont Parking Ordinance requires 121 parking spaces for the proposed project with 64 residential units and 3,400 square feet of commercial office space.

The project is deficient by 62 parking spaces.

However, under the Fremont Municipal Code Parking Ordinance, Section 8-22003, the City may grant a reduction in parking spaces if the anticipated tenancy includes affordable and special needs housing based on quantifiable evidence that the use is not likely to require the same levels of parking as standard residential development. The proposed project proposes 10 units to be Mental Health Service Act (MHSA) tenants with special needs and 5 units for transitional youth. 49 of the 64 residential units will be for very low and extremely low-income families. The anticipated requirement for motor vehicle parking for the tenants of the project is estimated to be much lower than in standard residential developments.

Furthermore, the Parking Ordinance allows for the reduction in parking spaces for developments in close proximity to alternative transportation infrastructure, amenities and on-street parking. The project site is within 200 feet of public transit services and 450 of the future BART station providing the tenants with viable transportation alternatives. The project site is also within 200 feet of commercial retail and personal service uses and there are up to 15 on-street parking spaces available directly adjacent to the project on Main Street and High Street. The Parking Ordinance also allows for joint use of available parking for residential and commercial uses for mixed use projects as the normal demand for parking between the two uses are not anticipated to coincide or overlap with each other. As such the reduction of 62 parking spaces will not have a significant impact on the adjacent properties or roadways.

The proposed reduction in parking spaces is illustrated in the table below.

Type	Size/Units	Required Parking			Proposed Parking		
		Tenant	Guest	Total	Tenant	Guest	Total
Studio	17	17	8.5	25.5	6	1	7
1BR	17	17	8.5	25.5	6	1	7
2BR	20	30	10	40	20	10	30
3BR	10	15	5	20	10	5	15
Sub-Total	64	79	32	111	42	17	59
Office Space	3,400 SF	11	-	11	11	-	11
Sub-Total		11	-	11	11	-	11
TOTAL		90	32	121	53	17	70

Staff believes that while the project does not completely meet the City's general parking standards, sufficient off-street (and some on-street) parking is available. Under the parking provisions of Section 8-22003(a)(2)(d) of the Zoning Ordinance (Article 20), the City may reduce the parking requirement for a particular project involving residential uses if it finds that there is sufficient on-street parking to meet the needs of the neighborhood and when at least one of the four specified findings qualifying for a reduction can be met. Staff finds that two of the four specific findings of Section 8-22003 can be made, as follows:

- i. Due to the use's proximity to alternative transportation infrastructure and service, including but not limited to BART, Amtrak, and other passenger rail services, bus service, or similar, the use is likely to require a lower level of parking than is required by similar projects not proximate to alternative transportation because residents will have viable transportation alternatives available.

Analysis:

The proposed project is served by bus lines 210, 212, 215, 218, 328, and 329. Additionally the project is approximately 450 feet from the proposed future Irvington BART station and line. The site is also located approximately 500 feet from Washington Boulevard, which is defined as an arterial street in the General Plan.

- iii. Due to the anticipated tenancy, including but not limited to affordable units, senior citizen units, single room occupancy (SRO), and efficiency units, and special needs housing, and based on quantifiable evidence, the use is not likely to require the same levels of parking standard residential development. This finding shall only be used for projects that have entered into a binding agreement with the City or other public agency guaranteeing the project will serve the identified tenancy type.

Analysis:

63 of the 64 residential units will be restricted for low, very-low and extremely-low income individuals and households. The applicant has submitted data to staff (Informational Item #2) to support the claim that at least five other built affordable housing facilities in the City and neighboring cities on average establish less than $\frac{3}{4}$ of the general parking ratio of a one space per unit requirement. Staff finds that the 0.88 space per unit ratio proposed for the 64 units of affordable housing is appropriate and sufficient.

Because of the mixed-use nature of the project, staff recommends that all parking should be shared in common. This will ensure that the parking facility is utilized to its most effective potential, avoiding the potential for future exclusive parking problems. Condition of Approval #3 addresses this arrangement.

Inclusionary Housing:

The entire project can be designated as affordable, as 63 of the 64 units are designated for very low and extremely low income households and individuals. The remaining unit is reserved for the caretaker of the property. Also included in the unit count are 10 units designated for participants in the Mental Health Services Act programs.

Design Analysis:

Site Planning:

The project site is located in the Irvington Planning Area and the Irvington Redevelopment Area. The site is located in a developed, urban area, surrounded by single-family residences, senior housing, light industrial uses, commercial uses, and the former Union Pacific Railroad tracks. The project site has frontage on two public streets, Main Street and High Street, both classified as Collector streets in the Fremont General Plan. Main Street generally runs in a north-westerly direction. High Street generally runs in an easterly direction. Currently, the two streets terminate at the former Union Pacific Railroad (UPRR) tracks, the remains of which also provide the eastern boundary of the project site. On High Street, the project site wraps around three single-story, single-family residences that also front upon High Street. North of the site on High Street, the site abuts additional single-story, single-family

residences. These single-family residences are zoned Garden Residential R-G-29 and designated Residential Medium 15 to 18 units per acre in the Fremont General Plan. Across (north of) High Street, a light industrial complex of contractors, machine shops, auto repair, and wholesale businesses operate in a 1½-story building on a site zoned and designated Light Industrial (I-L). Along the site's northwesterly and southwesterly boundaries, it abuts an existing single-story senior assisted living facility, which fronts onto Lincoln Street and is zoned Garden Residential R-G-29 and designated Residential Medium 15 to 18 units per acre. Across (south of) Main Street, uses include single-family residences, auto repair, and service uses (e.g., carpet cleaner, hair salon). The parcels south of Main Street are designated and zoned Community Commercial within the Irvington Overlay District, C-C(I). Some of the parcels on the south side of Main Street are through parcels with street frontage on Washington Boulevard and Main Street. These uses are located in one- and two-story buildings that generally front onto Washington Boulevard. East of the former UPRR tracks, the vacant parcel has an approved 196 unit project as Planned District P-2005-131 with a General Plan designation of Residential Medium 11 to 15 units per acre, Residential High 35 to 50 units per acre, and Private Open Space.

Currently, a sizeable public works project is in progress to create a railroad grade separation at Washington Boulevard, located 300 feet southeast of the site. Completion of the railroad grade separation will facilitate extension of BART from central Fremont (the current end of the line), south to Warm Springs in southern Fremont. As a result of these efforts and planned development east of the site, the UPRR line that used to abut the easterly boundary of the site was relocated farther east late in 2008. Access to the future BART Station would be provided by extending High Street south around the eastern edge of the project site (on the area formerly used by the UPRR tracks). High Street would extend south under Washington Boulevard to the Irvington BART Station, which would be constructed at some time in the future directly south of the Washington Boulevard grade separation. The project site is located approximately 450 feet northwest of the future Irvington BART Station.

The project site's street frontage on both High and Main Streets is unimproved, lacking curb, gutter, parkway strip, and sidewalk. The surrounding neighborhood streets have an intermittent pattern of improvements to City specifications. The area also has utilities located in overhead conduits. Improvements will be completed with this project, including street alignment and sidewalks to City standards.

The project site, once combined, is an irregular shaped collection of six separate parcels that will be combined through a lot combination application, which is a ministerial action by City staff. The design for the approximately 1.6 acre site includes a through access that connects the two street frontages by way of an internal circulation system restricted to emergency and fire vehicles and potentially garbage collection trucks. Access to the subterranean parking garage is off of Main Street. The at-grade parking on site is accessed from the High Street frontage, and includes a turn around area should parking not be available in those spaces. Bicycle parking is located adjacent to Building Two and likely other areas, as the plans develop through the building permit stage.

Building One, which fronts onto Main Street, is designed to house 47 units, with 1,210 square feet on the ground floor designated as a community room and kitchen and storage area. The ground floor also has 1,260 square feet designated for tenant support services, and includes offices, a computer room and a meeting room. Building Two is designed for 17 units and also houses the facilities' laundry and maintenance workshop, which account for approximately 820 square feet. Building Two abuts the

property line to the northwest and has a street frontage on High Street of approximately 74 feet. Both buildings have orientation towards the interior of the site and help to provide definition to the open space area that is proposed in much of the interior of the development. The open space area is approximately 14,365 square feet and includes a planting area, rubberized play surface, lawn area and seating. The intent is to provide a safe and accessible space for gathering, playing and community interaction for the site in a centralized location for enhanced security and feeling of home. Private open space areas are provided for most of the units in the project through balconies and patios.

Architecture:

The applicant proposes to construct two, three story buildings on an approximately 1.6 acre site (consisting of 6 consolidated parcels). Building One, 34 feet 7 inches high, will front onto Main Street. Building Two, 30 feet high, is oriented towards the interior of the site and has a building side elevation of approximately 36 feet wide that fronts onto High Street.

The architecture can generally be described as modern and urban, highlighting the project's location in a mixed use area where existing uses are residential, light industrial and service-based. The materials proposed utilize a concrete base, painted cement plaster trims and wood panel accents. Windows are present along the Main Street frontage that creates an urban pedestrian experience of street interaction. Aluminum windows and doors are proposed, with painted metal awnings over balconies on the second and third floors. Balcony railings are wooden slats. The color scheme is warm and defined to balance the use of metal and wooden accents. Building One overhangs approximately 2 feet over Main Street. Coupled with the popped out balconies, the overall look is to enhance street presence. Building Two is an L-shaped structure that has more of a residential character to it, in contrast to the urban look of Building One.

The corner of Main and High has a recessed rounded entryway for the office space that will inhabit it, that includes double glass doors and rounded metal balconies on the second and third floors. A curb ramp and bulb out are at the corner of Main and High, to complete the pedestrian friendly development of the site to the Irvington Concept Plan's standards.

Green Building Technologies: Conventional building and remodeling practices use a lot of natural resources and create a lot of waste. Debris from building construction and demolition accounts for more than 21% of the materials disposed in Alameda County landfills. "Green building" means taking steps to create buildings that are safe and healthy for people and that protect our environment. While specific methods and products may vary from project to project, the basic principles of green building apply to all types of new construction and renovation.

The applicant proposes to implement technologies and practices of green building, using recycled content material, reuse of materials, and waste reduction, among others. The project goal as stated by the applicant is to achieve a Green Point Rating of 109 from Build It Green whereas the City has established a 50-point minimum rating. As an example, to achieve this goal the following are considered for project implementation with several other green/sustainable features that will be defined and assured during the construction design phase:

- Recycling of demolition and construction waste;
- Planning for on-going recycling of trash;

- Selecting interior material which includes recyclable materials and those which improve indoor air quality;
- Designing of the exterior envelope will focus on providing shading for windows to minimize heat gain, as well as providing a well insulated building with thicker walls and roof insulation;
- Installation of Energy Star appliances and high efficiency toilets in all locations; and,
- Pre-wiring and planning for photovoltaic panels so that they can be incorporated if the budget allows or additional funding is provided.

Open Space/Landscaping:

Approximately 17,000 square feet of landscaping is proposed onsite in a system of perimeter planting areas, sidewalk borders, and Stormwater treatment areas. A main open space area links the two buildings. This area provides amenities for both active and passive activities. Included in the design of this central open space is a half court basketball area, raised beds for vegetable gardening, a rubberized play area, lawn and benches. Concrete pavers along the perimeter frame the open space, a row of Italian Cypress reinforce the walkway and provide a green wall and large shade trees will provide a ceiling for this special place within the development.

The proposed development allows for the successful preservation of Tree #4 (Locust) as well as the two (2) California Pepper trees along the High Street project frontage. The curb is being realigned to preserve the two large California Pepper trees located in the right of way along High Street. The arborist report rates the health of these trees as fair and so additional investigation shall be performed to verify that these trees can be preserved as part of the development. Should either or both California Pepper trees within the right of way need to be removed the applicant shall mitigate the loss of the tree(s) by replanting a 72 inch box tree for each tree. Nineteen (19) 24" box trees shall be planted as mitigation for loss of the existing 19 trees (Condition #50). The street trees shall be 24" box size, while the balance of trees onsite may be 15-gallon-sized.

A total of twenty-two trees, representing seven species were evaluated in an arborist report for this site, prepared by Forestreet Company in August 2008.

The applicant has proposed a total of 95 additional trees onsite. This quantity exceeds the 35 required and will in most likelihood be reduced during design development as a result of matching the quantity of trees with the required planting space. Columnar trees will be planted along the perimeter to provide a green edge for the project, large trees shall be carefully located for shade, and smaller accent trees shall be added for interest and where there is insufficient room to add a larger tree. Shrub and groundcover plantings shall be attractive, drought tolerant, and spaced appropriately to reduce required maintenance. In conjunction with the trees overhead, the shrubs and groundcover shall provide additional interest, and soften hard edges of the constructed environment. The applicant is proposing the use of green screens planted with vines and tree wells along the Main Street elevation, in the public right-of-way. Maintenance and installation of which are solely the responsibility of the applicant and managing company. (Condition #12) The applicant will be required to adhere to the Bay Friendly Landscaping Guidelines scorecard for development that includes achieving 7 out of 9 points. (Condition #41)

The Bay-Friendly Landscape Program (BFL) is a holistic approach to landscape design and maintenance that works in harmony with the natural conditions of the SF Bay watershed. Landscapes developed with the program prioritize criteria such as local climate, soils and topography. The goal is to develop

landscapes with greater local pest resistance, less maintenance, less use of resources, and less generated waste (caused by constant pruning).

View Impacts:

The project site is not located near a scenic highway or any scenic vistas or resources, as identified in the Fremont General Plan. The proposed project will have no significant impact on existing views.

Circulation:

Trip calculations are based on standard ITE survey rates for a conservative analysis of trip generation potential. As a deed restricted low income affordable housing project, the trip generation rate will likely be substantially lower than ITE rates that are based on standard development surveys. The existing approved town home use (P-84-12) would generate approximately 141 weekday trips and 12 P.M. peak hour trips. The proposed project would generate approximately 510 weekday trips and 48 P.M. peak hour trips, which is a net increase of 369 weekday trips and 36 P.M. peak hour trips from the approved project. Based on the low number of trips the proposed mixed-use project is estimated to generate, it would not adversely impact Main Street or High Street. This conclusion is based upon the designation of the street as a residential collector that operates well below capacity.

The Fremont General Plan establishes an acceptable signalized intersection level-of-service at LOS D. LOS D represents busy intersections with short peaks but no long-standing vehicular queues are formed. In 2008, as part of the comprehensive General Plan Update, intersection LOS calculations were completed, which included the Fremont Boulevard/Union Street/Washington Boulevard intersection near the project site. A report documenting the findings of the 2008 intersection calculations was published in June 2008 as the General Plan Update 2030 Transportation Background Report. Based on this 2008 report, the Fremont Boulevard/Union Street/Washington Boulevard intersection operated at an A.M. peak period LOS of B and P.M. peak hour LOS of C. The recently approved 196 unit project (P-2005-131) was also considered as cumulative background traffic when considering the proposed project. The additional 48 P.M. peak hour trips and 510 weekday trips generated from the proposed project would not reduce the existing intersection level of service below the City threshold of LOS D. The project's impact on intersection level of service would be less than significant. The project is subject to traffic impact fees to address potential incremental cumulative impacts to the citywide transportation network. Payment of these citywide fees results in a less than significant impact for long term cumulative impacts to the transportation network.

Interior circulation for the site is provided for through the development of a drive aisle intended for emergency and fire access only. An entry gate from High Street will allow for residents and guests to access the on-grade parking located adjacent to Building Two, but another gate will prevent any through access. Entrance to the subterranean parking garage is from Main Street, and is again protected from through access by gates. The gates will be equipped with infrared sensors to allow fire and emergency access to the site. Residents will be equipped with key cards or a remote device to release the access gates. A turn around area is provided adjacent to Building Two in order for folks to exit the on-grade parking should none be available or once they are preparing to leave the complex.

Street Right-of-way Dedication and Improvements:

Main Street Improvements: The Irvington Concept Plan (Concept Plan) identifies Main Street as a pedestrian-oriented link between the Five Corners and BART station. To define the pedestrian environment, the Concept Plan illustrates street corner bulb-outs, street trees, and other amenities for

Main Street. The Concept Plan designates Main Street with a total right-of-way width of 64 feet, increasing the sidewalk width to 12 feet on each side. The developer is required to dedicate right-of-way and install street improvements along the Main Street frontage of the project.

High Street: High Street is classified as a two-lane collector street in the General Plan. The developer shall dedicate a minimum right-of-way width of 30 feet from centerline, which transitions to a 28 feet right-of-way width from centerline as High Street intersects with Main Street. Since no improvements exist near the High and Main Street intersection, the developer is required to install street improvements that may be beyond the centerline to meet the minimum standard widths for traffic and emergency vehicle access.

Street Improvements: As part of the application, the developer will dedicate right-of-way and install complete street improvements, including, but is not limited to curb, gutter, sidewalk, curb ramps, pavement, landscape, utilities, removal of existing overhead utilities and street lights. Improvements within the public right-of-way shall be per City standards details.

Easements/Mapping:

To create the proposed parcel for the project, the developer will be required to submit a Lot Combination application for review and approval. In lieu of a Lot Combination application, the applicant can submit a Tentative Parcel Map application.

Grading & Drainage:

The existing topography of the site is relatively flat with elevations ranging between 73 feet to 69 feet above mean sea level. To meet the parking stall count required for the project, the developer is constructing a subterranean garage near the Main Street driveway entrance. The design includes retaining walls to slope the drive aisle down to the garage. Other grading for the site will consist mainly of grading necessary to bring the building and the curb grades to the required elevation to provide positive drainage for the site. The project Civil Engineer estimates the earthwork quantities to be 8,000 cubic yards of cut and 20 cubic yards of fill for a total grading of 8,020 cubic yards.

The project will connect to an existing storm drainage facility located on Main Street to drain onsite and street widening runoff. To collect the storm runoff on High Street, the developer is extending a storm drainage main pipe and installing curb inlets. The proposed storm drainage system will be subject to the approval of the City Engineer and Alameda County Flood Control District.

Urban Runoff Clean Water Program:

The Alameda Countywide National Pollution Discharge Elimination System (NPDES) Municipal Stormwater Permit requires all new development to incorporate measures to prevent pollutants from being conveyed in storm water runoff and into the public storm drain system. This project is required to comply with the NPDES permit by incorporating treatment measures into the project design.

The project intends to meet the quantitative storm water treatment requirements by constructing bioretention areas within the project site and installing landscape based treatment within the public right-of-way. The storm water treatment design shall be integrated into the storm drain design for the project and shall be subject to review and approval of the City Engineer prior to building permit approval.

Utility Districts:

The project plan submittal includes a conceptual utility plan, for informational purposes, which shows the proposed location of utility mains (water, sewer, storm), fire hydrants, meters, and clean outs. The project landscape plans have been prepared with respect to the utility plan, such that trees and other landscape improvements are kept clear of utilities, as required by the respective agencies. During the building permit plan review, the project utility plan is subject to review, approval, and permitting by the utility agencies, prior to building permit approval. The developer is encouraged to coordinate with the other permitting agencies and utility companies to prevent delay in obtaining building permit issuance.

Applicable Fees:

This project will be subject to Citywide Development Impact Fees. These fees include fees for fire protection, park facilities, park land in lieu, capital facilities and traffic impact. All applicable fees shall be calculated and paid at the fee rates in effect at the time of building permit issuance. The project qualifies for fee deferrals as it is an affordable project. The applicant shall make their fee deferral request concurrent with first building permit submittal if desired.

Environmental Review:

An Initial Study and Draft Mitigated Negative Declaration have been prepared for this project. The environmental analysis identified concerns regarding potential impacts from construction noise and seismic activity. The Draft Mitigated Negative Declaration includes mitigation measures, which, if implemented, would reduce the identified impacts to non-significant levels. These mitigation measures have been included as conditions of approval for this project. A more detailed description of the potential impacts is provided within the Initial Study for the project, which is included as an enclosure.

The City received a comment from the Northwest Information Center regarding the potential for the discovery of unrecorded Native American resources and historic-period archaeological resources within the project area. The City has responded with a recommendation that an observer be present during initial ground disturbance and excavation activities to ensure that no archaeological resources are discarded or ignored (Condition #26).

Geologic Hazards:

The project site is within the Alquist-Priolo Earthquake Fault Zone on maps released by the State Geologist. In accordance with the State law, the project geotechnical engineer prepared a seismic hazard report. The report was reviewed and approved by the City and filed with the State Geologist. The project improvements and building construction will conform to the recommendations of the seismic hazard report.

Based on the Geotechnical and Geological Investigation report, it was concluded that the collected data indicates the site free of active faulting, and therefore setbacks not required for site development. It was also concluded that conventional spread footings are allowed given that the building pad for Building Two and garage footings for Building One are properly prepared to account for the near-surface fills.

FEMA Flood Zone:

The runoff from the project site will drain into a flood control facility, Zone 6, Line E (Laguna Creek), owned and maintained by the County. Due to the flooding of properties adjacent to Laguna Creek, the project shall not augment runoff into Laguna Creek and exacerbate downstream flooding. Onsite mitigation measures will be necessary if there is augmented runoff.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 81 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on June 12, 2009. A Public Hearing Notice was published by *The Tri-City Voice* on June 10, 2009.

In addition, a Notice of Preparation of a Draft Negative Declaration was published by *The Tri-City Voice* on June 4, 2009.

In addition, courtesy signs were posted on the project site during application review, and 82 community meeting flyers were mailed as a courtesy to addresses located within 300 feet of the project site. The flyers invited the neighbors and interested parties to participate and view the plans at a community outreach meeting held by the applicants on June 4, 2009. A total of 18 people signed the attendance list at the community meeting. A copy of the meeting report is included as Informational Item # 4.

ENCLOSURES:

Exhibits:

- Exhibit "A" [Mitigated Negative Declaration](#)
- Exhibit "B" [General Plan Amendment](#)
- Exhibit "C" [Rezoning](#)
- Exhibit "D" [Project plans: site, floor, elevations, landscaping, Preliminary Grading Plan](#)
- Exhibit "E" [Findings and Conditions](#)

Informational Items:

1. [Initial Study](#)
2. [Applicant statement regarding parking data](#)
3. [Multifamily GreenPoint Rated Checklist](#)
4. [Community Engagement Report from community meeting held by applicant on June 4, 2009](#)
5. [Applicant's statement](#)

Supplemental Hearing Materials:

6. Colors and Materials Board
7. Color renderings/elevations

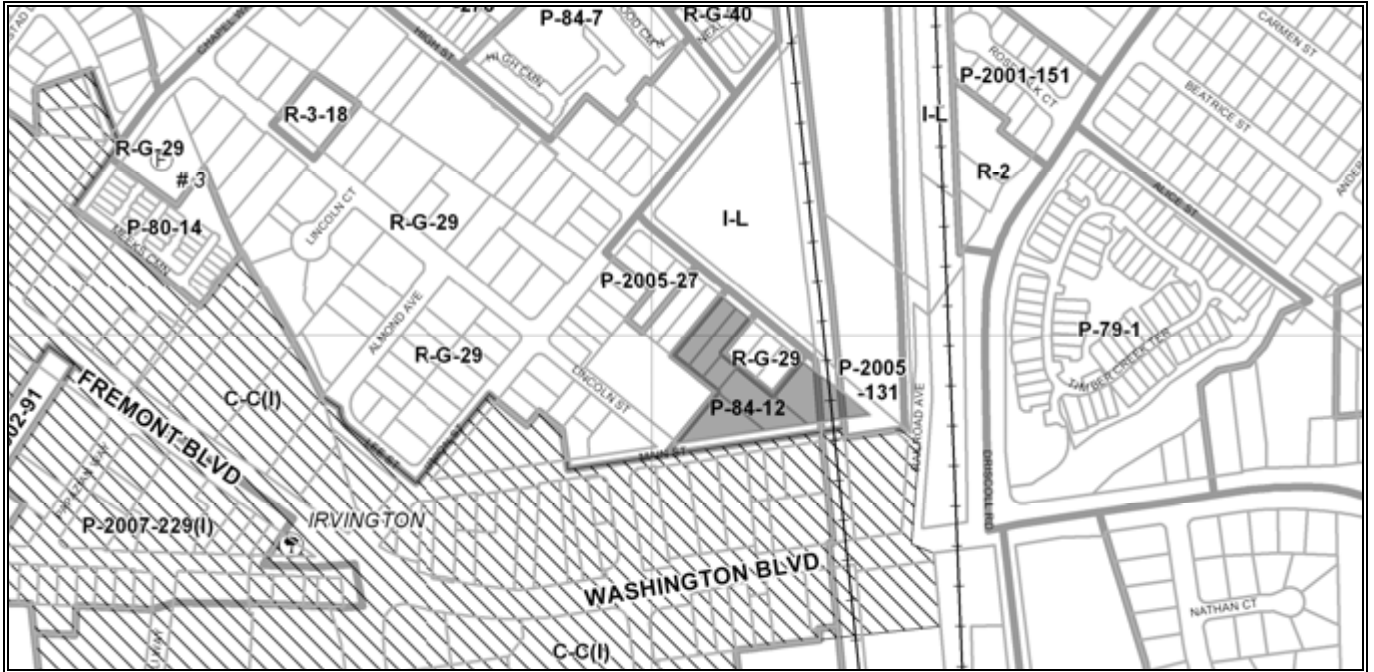
RECOMMENDATION:

1. Hold public hearing.
2. Recommend that the City Council adopt the Mitigated Negative Declaration and find this action reflects the independent judgment of the City of Fremont.

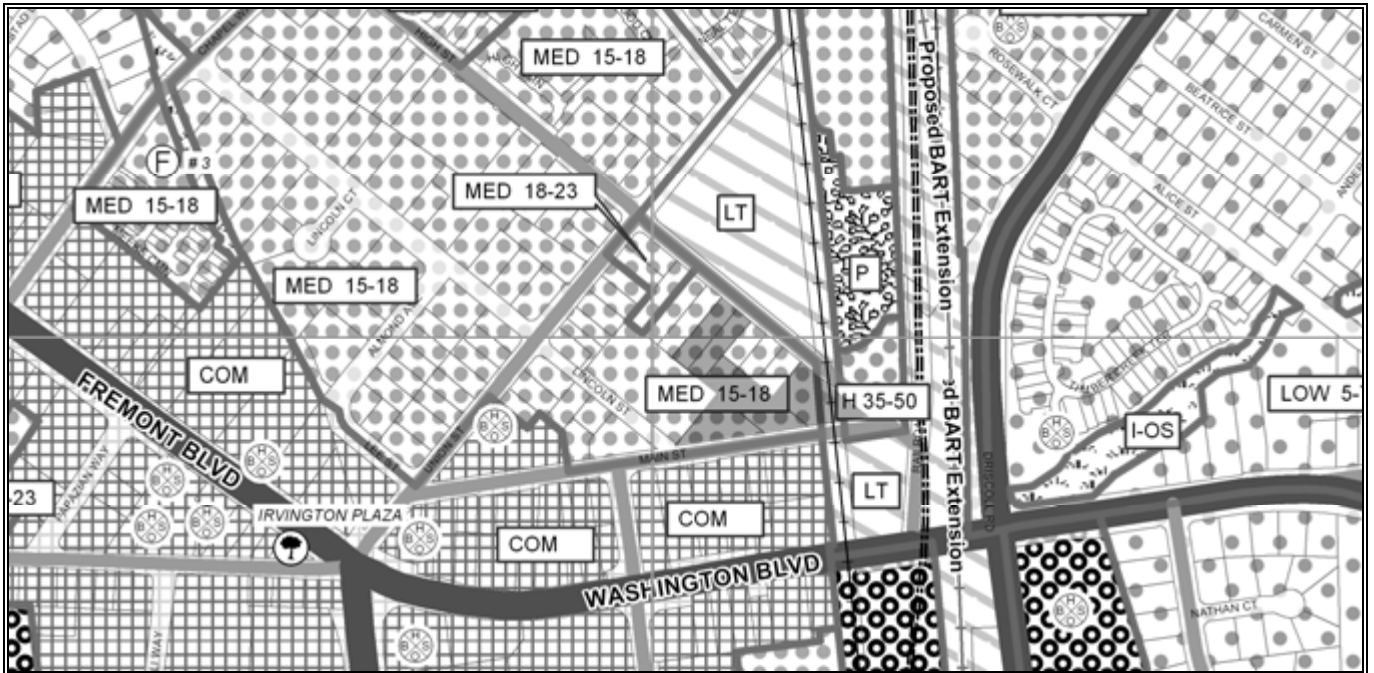
3. Find that the proposed General Plan Amendment, Rezoning, Conditional Use Permit, Preliminary Grading Plan and Site Plan and Architectural Review are in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use and Housing Chapters as enumerated within the staff report. The project also conforms to the goals, objectives, and policies of the Irvington Concept Plan.
4. Recommend that the City Council Approve General Plan Amendment from Medium Density Residential (15-18 dwelling units per acre) to High Density Residential (27-35 dwelling units per acre) as shown on Exhibit "B".
5. Recommend that the City Council Approve Rezoning from P-84-12 to R-3-35 as shown on Exhibit "C".
6. Recommend that the City Council approve the conditional use permit and preliminary grading plan, as shown on Exhibit "D", subject to findings and conditions in Exhibit "E".

Existing Zoning

Shaded Area represents the Project Site



Existing General Plan



Pln 2009-00153

General Plan Amendment Exhibit “B”

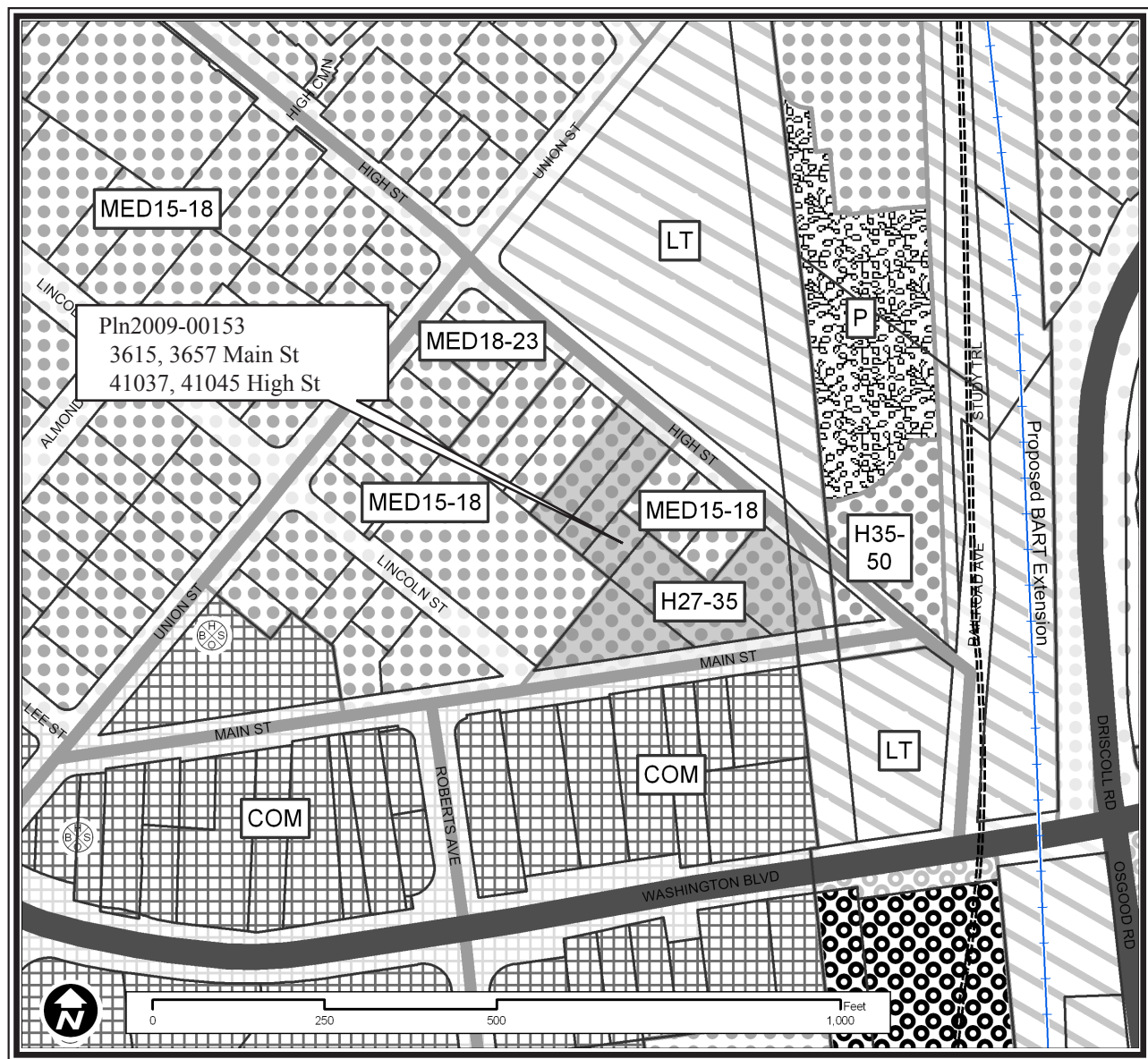
Incorporated as Attachment No. 1

And Made Part of Resolution No. _____

On the _____ day of _____, 2009.

GENERAL PLAN LAND USE DIAGRAM (SECTION)

AFFECTS LAND USE MAP(S) IN THE IRVINGTON PLANNING AREA



[cc on 2009-07-07], [pc on 2009-06-25] 78-376, 78-380, 72-376, 72-380

Project Name: Main Street Village

Change From: Residential, Med 15-18 du/ac

To: Residential, High 27-35 du/ac

SS

Pln 2009-00153

Rezoning Exhibit "C"

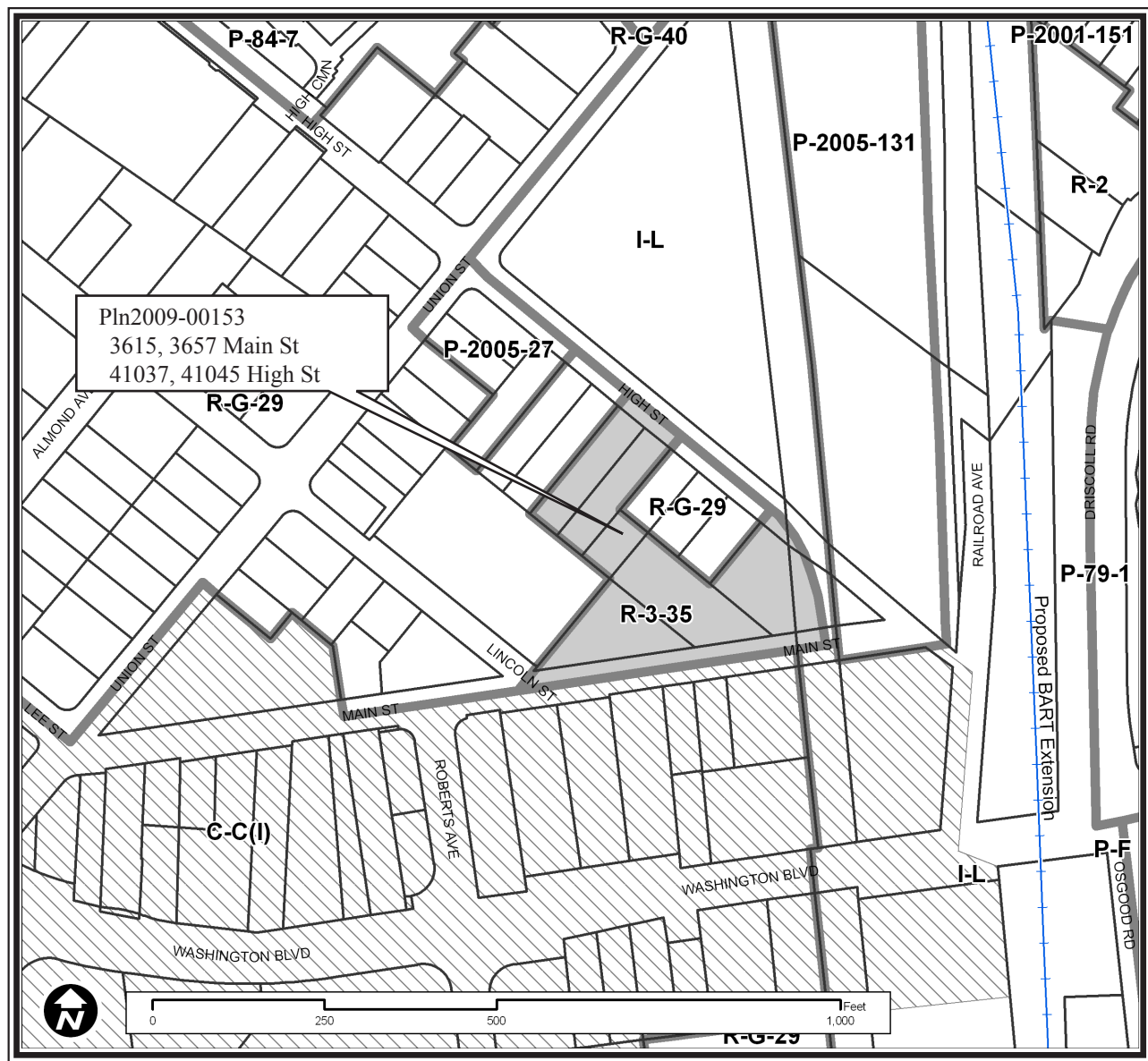
Incorporated as Attachment No. 1

And Made Part of Ordinance No. _____

On the _____ day of _____, 2009.

ZONING MAP (SECTION)

AFFECTS ZONING MAP(S) IN THE IRVINGTON PLANNING AREA



[cc on 2009-07-07], [pc on 2009-06-25] 78-376, 78-380, 72-376, 72-380

Project Name: Main Street Village

Change From: P-84-12

To: R-3-35

SS

EXHIBIT "E"

Findings and Conditions of Approval

For PLN2009-00153, Main Street Village Conditional Use Permit, and Preliminary Grading Plan

3615/3657 Main Street and 41045/41053 High Street

APN's: 525-0641-005-00, 525-0641-006-00, 525-0641-008-00,
525-0641-011-00, 525-0641-012-00, and 525-0641-013-00

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated June 25, 2009 incorporated hereby.

General Plan Amendment:

The proposed project is in conformance with the relevant provisions of the City's General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use, Housing, Open Space, Transportation, and Health and Safety Chapters as enumerated within the staff report. The project also conforms to the goals, objectives, and policies of the Redevelopment Plan and conceptual development envisioned in the Irvington Concept Plan.

Conditional Use Permit Findings:

- A. **The proposed use is consistent with the general plan because** the general plan allows new office developments to locate near or a part of residential developments, provided the office use is compatible with and compliments nearby or adjacent development. In this case, the proposed office use will provide many of the services that the residents of the proposed residential site use and rely upon;
- B. **The site is suitable and adequate for the proposed use because** the R-3 zone envisions the potential for mixed use developments wherein office use is harmonious with affordable housing. In this instance, the office space will be used as the regional office for the property owner, an affordable housing developer and service provider.
- C. **The R-3 zoning district allows for uses permitted or conditionally permitted in neighborhood commercial and office commercial districts as long as the use is located on the first story of a multi-family residential building that is three stories tall and located on a parkway, arterial or collector street.** The proposed project is located on a residential collector street, is located in the ground floor of a three story multi-family residential building and the proposed office use is permitted in the office commercial district.
- D. **The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services because** the project proposes to construct the street network upon which increased levels of service will be accommodated. In addition, the residential collector street operates at levels below capacity, and the proposed project will not substantially increase the number of trips;

- E. **The proposed use would not have a substantial adverse economic effect on nearby uses because** a limited amount of office space is proposed and is not seen as a detriment on the neighborhood as the use is of a harmonious nature with the proposed project;
- F. **The proposed office use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large because** the R-3-35 zoning designation allows for office uses and the proposed office use would provide services to the residents of the housing units that are also a part of the proposal, while the office use is proposed in conjunction with the residential component;
- G. **The design of the project is compatible with existing and proposed development in the district and its surroundings because** of the mixed use nature of the neighborhood; and the proposed project's adherence to the Irvington Concept Plan vision for the site.
- H. **The project will comply with the provisions of article 27 of this chapter (Site Plan and Architectural Approval) in that** all relevant provisions of Article 27 have been applied to the submittal and review procedure as enumerated in the staff report and shown in Exhibit "D".

Parking Reduction Findings:

- I. **Two specific findings of Section 8-22003 below warrant approval of a parking reduction, as follows:**
 - i. **Due to the use's proximity to alternative transportation infrastructure and service, including but not limited to BART, Amtrak, and other passenger rail services, bus service, or similar, the use is likely to require a lower level of parking than is required by similar projects not proximate to alternative transportation** because residents will have viable transportation alternatives available as the site is well-served by AC Transit lines 210, 212, 215, 218, 328, and 329. Additionally, the proposed future Irvington BART station is approximately 450 feet from the project site.
 - iii. **Due to the anticipated tenancy, including but not limited to affordable units, senior citizen units, single room occupancy (SRO), and efficiency units, and special needs housing, and based on quantifiable evidence, the use is not likely to require the same levels of parking standard residential development. This finding shall only be used for projects that have entered into a binding agreement with the City or other public agency guaranteeing the project will serve the identified tenancy type.** 63 of the 64 residential units will be restricted for individuals and families at an affordable rate for extremely- and very-low income levels. The applicant has submitted evidence to staff that five other built affordable housing developments in the Fremont and neighboring cities on average have shown that the standard proposed to be adequate. Therefore, staff finds that the 0.88 space per unit ratio proposed for the 64 units of affordable housing is appropriate and sufficient.

Preliminary Grading Plan Findings:

- J. The proposed project described in the application would not have an appearance, due to the grading, excavation, or fill, substantially and negatively different from the existing natural appearance.
- K. The proposed project described in the application would not result in geologic or topographic instability on or near the site. A peer reviewed geotechnical evaluation of the site was conducted and the proposed project will implement all geotechnical recommendations, as conditioned.
- L. The proposed project described in the application would not endanger public sewers, storm drains, watercourses, streets, street improvements, or other property; will not interfere with existing drainage courses; and will not result in debris being deposited on any public way. The applicant is required to submit a plan to control erosion and siltation during and after construction for review and approval by the City Engineer, as well as provide on-going maintenance of on-site stormwater treatment devices.
- M. The proposed development is located in a special seismic liquefaction study zone, and there is evidence that fault traces exist on the site. A seismic geotechnical was prepared and peer reviewed by a City-selected consultant. Recommendations of that geotechnical study shall be implemented in the design and construction of the site and buildings.
- N. In compliance with the conditions of approval, the proposed project described in the application will not unacceptably affect the health, safety, and or welfare of adjacent residents or landowners, nor the citizens of Fremont.

Density Bonus Finding:

- O. The proposed project is eligible for a density bonus of 14.3% to construct a total of 64 units for the site under City and State density bonus laws because at least 15% of the total units will be restricted for either extremely- or very-low income households for a period of not less than thirty (30) years.

CONDITIONS OF APPROVAL:

General Conditions

1. Except as modified by the conditions herein, the project shall substantially conform to Exhibit "E" (Project Site, Architectural and Landscape Plans) and all conditions of approval set forth herein. The approval consists of:
 - **64** residential units, including 63 residential units designated as very low and extremely low income.
 - **3,400** square foot office space.
- 2) Prohibited uses are any uses not specifically requested and approved as part of this application submittal.
- 3) All parking stalls on the site shall be shared in common. In addition, residential/office tenants and property owners shall agree to and comply with the parking provisions listed below.
 - a. The parking of boats, campers, trailers on the site (i.e., at-grade surface employee/resident/guest parking area) is prohibited.
 - b. All parking shall be unrestricted and available to all tenants, residential or office.
 - c. All residents and employees shall receive a device to open the gates to access the parking on-site.
 - d. The Property Manager shall inspect parking spaces and determine if a tenant, guest or employee is violating requirements contained in this condition.
 - e. The City has the right, but no duty, to enforce these conditions, including the right to inspect the parking areas for violations of the above.
- 4) The applicant and City staff shall continue to work on refining the architecture of the buildings, which may include modifications to outside appearance, materials or articulations. However, the overall design of the project shall remain and no less than 64 units in two building shall be developed on the project site.
- 5) Minor modifications to the approved building designs and siting, elevations and colors may be made, subject to review and approval of the Planning Director or the Director's designee if such modifications are in keeping with the architectural statement of the original approval. However, the Planning Director shall retain the authority to determine the level of review required (i.e., depending on the severity of the modification, the project may be referred to the Planning Commission for review and approval).
- 6) The project is subject to city-wide development impact fees, including, but not limited to fees for fire protection, park facilities, park land in lieu, capital facilities and traffic impact. All applicable fees shall be calculated and paid at the fee rates in effect at the time of building permit issuance. The project qualifies for fee deferrals as it is an affordable project. The applicant shall make their fee deferral request concurrent with first building permit submittal if desired.

- 7) Thirty days after final City Council decision regarding the project, the courtesy signs posted on the site must be removed, regardless of approval or denial of the project.

Legal Requirements/Agreements/Deed Restrictions

- 8) The developer and property owner of the site shall defend, indemnify, and hold harmless the city or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the city, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The city shall promptly notify the provider(s) of any such claim, action or proceeding. The city shall have the option of coordinating the defense. Nothing contained in this condition shall prohibit the city from participating in a defense of any claim, action, or proceeding if the city bears its own attorney's fees and costs, and the city defends the action in good faith.
- 9) The applicant shall comply with the provisions of the permits required from any state or regional agencies, including, but not limited to, the Bay Area Air Quality Management District (BAAQMD), Regional Water Quality Control Board (RWQCB), Union Sanitary District's (USD) POTW and the Alameda County Department of Environmental Health.
- 10) All requirements of the currently adopted edition of the California Building, Fire and City of Fremont Municipal Codes in effect at the time of building permit / business license application
- 11) In accordance with the proposed solid waste/recycling plan, garbage, trash or recycling containers shall be collected and concealed in an area dedicated within the structure and established locations on the site.
- 12) The developer is responsible for maintaining the vine planting and appurtenances located within the public right-of-way that enhances the building facade. The developer shall enter into a maintenance agreement that reflects this requirement, prior to the issuance of a building permit. The form and content of the agreement is subject to review and approval by the City Engineer and City Attorney.
- 13) The Property Owner(s) shall enter into an Affordable Rental Housing Regulatory Agreement with the City whereby residential units are made available at affordable rental levels of extremely- and very-low income household levels as defined by City and State law for individuals and families, subject to the review and approval of the Office of Housing and Redevelopment. The Affordable Rental Housing Regulatory Agreement shall run with the land, made part of the project's conditions of approval and shall be recorded on the property title prior to the issuance of a building permit.

Maintenance and Management

- 14) The Property Owner shall be responsible for the maintenance of all commonly owned facilities, including the parking/circulation areas, which are not maintained by the public utility agency. The property owner may enter into a binding professional agreement with a responsible party at their discretion.

- 15) The Property Owner shall be required to contract with a professional management firm to handle maintenance operations and waste/recycling collection procedures. Documentation of such contract shall be submitted to the City. All commonly owned facilities shall be well-maintained in a good condition.
- 16) The Property Owner shall designate responsibility for the maintenance of all common areas, including the onsite stormwater treatment facility and its associated appurtenances. Landscaping shall be designed with an efficient irrigation system to reduce runoff and promote surface filtration and to minimize the use of fertilizers, herbicides, and pesticides which can contribute to urban runoff pollution.
- 17) No power equipment, hobby shops, car maintenance (other than emergency work), commercial/office related activities shall be permitted within the parking areas where such activities would displace normal use of the parking spaces for day to day intended parking purposes.
- 18) The Property Owner is to periodically provide educational materials on stormwater pollution prevention (as furnished by the City) to all residential occupants and commercial tenants.
- 19) The Property Owner shall define the responsible party for litter control and sweeping of all paved surfaces of the private street and within the development. All private storm drain systems are to be cleaned immediately before the commencement of the rainy season (October 15).
- 20) All roof-mounted and other mechanical equipment shall be screened from view from adjacent public right-of-ways.
- 21) In accordance with the proposed solid waste/recycling plan, garbage, trash or recycling containers shall be collected and concealed in an area dedicated within the structure and established locations on the site.
- 22) A provision shall be included in the property maintenance agreement stating that the payment of the utility (e.g., water, energy) bills for all common facilities, including maintenance, are the obligations of the property owners .
- 23) No storage of household and/or office goods is permitted within balconies and patio areas. Storage of bicycles may be approved, the design of said storage areas being subject to review by the Building Permit with Site Plan and Architecture Review process.

Mitigation Measures

- 24) **Air Quality:**
Dust Control (PM10) Control Measures:
Prior to the issuance of a permit, the following measures shall be included in a dust control plan and noted on construction plans with a designated contact person for on-site implementation of the dust control plan.

- a. Water all active construction and site preparation work areas at least twice daily and more often during windy periods.
- b. Cover all hauling trucks or maintain at least two feet of freeboard.
- c. Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.
- d. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
- e. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).
- f. Enclose or cover securely exposed stockpiles.
- g. Replant vegetation in disturbed areas as quickly as possible.
- h. Suspend construction activities that cause visible dust plumes to extend beyond the construction site.

Implementation of the preceding measures results in a less than significant impact.

25) **Geology and Soils:**

Final Building Plans and construction details shall incorporate recommendations of the Miller Pacific Report. "Minimum mitigation of ground shaking includes seismic design of the structure in conformance with the provisions of the most recent version (2007) of the California Building Code. The magnitude and character of these ground motions will depend on the particular earthquake and the site response characteristics. Based on the interpreted subsurface conditions and very close proximity to the Hayward Fault, we recommend the CBC coefficients and site values shown in (attachment to report)."

26) **Archeological Resources:**

The City received a comment from the Northwest Information Center regarding the potential for the discovery of unrecorded Native American resources and historic-period archaeological resources within the project area. The City has responded with a recommendation that an observer be present during initial ground disturbance and excavation activities to ensure that no archaeological resources are discarded or ignored.

Special Project Conditions

- 27) The applicant should incorporate technologies and practices of green building (e.g., using recycled content material, reuse of materials, waste reduction, and among others). For the residential portion, the project should achieve a minimum of 50 points and attain the minimum prerequisites and categorical points as measured by the 2008 (or newer version) New Home Construction greenpoint checklist published by Build It Green. The applicant is striving to achieve over 109 points on the Multifamily checklist. A completed checklist shall be submitted with the submission of the first building permit application to the Planning Division for review.
- 28) The developer shall request PG&E to commence with the design of the utility work for the proposed development after the Planning Commission approval.

- 29) The applicant shall work with the property owners of the three existing houses that front on High Street to develop and construct, to the cost of the applicant, new fencing that is attractive and mutually maintained.
- 30) The applicant shall work with the property owners at 41053 High Street to relocate the existing shed that is currently encroaching upon the subject site property. The applicant shall bear the cost and burden of relocating existing shed onto the property at 41053 High Street.

Prior to Issuance of Building Permits (Plan Details and/or Modifications Required)

Site and Architectural Design

- 31) The applicant shall submit a separate striping and signing plan for the surface parking and circulation area as well as the garage parking area. Striping and signing plan shall conform to CA MUTCD, Standard Plans and Specifications and City Standard Details. The final striping and signing plan shall be subject to approval of the City Engineer.
- 32) The applicant shall provide information and details regarding equipment to be used to secure bicycles within the garage bike parking storage facility.
- 33) The placement of trash receptacles, benches, bike racks, light bollards and other site furnishings shall be subject to further review through the City's Building Permit with Site Plan and Architecture Review (BSPAR) process to ensure the placement and amount of site furnishings is adequate.
- 34) The trash enclosure locations are still under review. The applicant shall work with Environmental Services and Allied Waste Services to find an acceptable location, which may require the garbage trucks using the limited access driveway through the site with the same type of electronic signal as the fire trucks. Final design of trash collection to be resolved during the Building Permit with Site Plan and Architectural Review process and prior to the issuance of a building permit.
- 35) All new utility service connections to the buildings, including electrical and communications, shall be installed underground. Electrical transformers shall be installed within an appropriate utility easement or public service easement.
- 36) All utility and fire appurtenances, meters and risers shall be concealed or screened from view by materials of a design and composition compatible with the architectural treatment of the project. Proposed utility closets shall be sufficient in size to accommodate the necessary utilities.
- 37) The developer shall work with satellite service providers on a universal, centralized satellite service system to minimize the amount of equipment (i.e., number of satellite dishes and cables) needed to provide optional service to all tenants. In addition, all bedrooms, including the living room, shall be pre-wired with phone, cable and satellite connections. No external wiring of these utilities shall be permitted.
- 38) The design for the trash chute system in Building One is still under review. This shall be reviewed at the time of first building permit submission.

- 39) The trash enclosure must be securable to keep unwanted personnel from accessing or inhabiting the structure. It must be equipped with a gate or door that has the ability to be locked. The distance between the top edge of the wall and the roof is to be enclosed with acceptable fencing; preferably a vertical wrought iron style. A maximum opening or gap distance of 4 inches for any enclosure opening is not to be exceeded. Install adequate fencing, lighting, signage, or other security measures to ensure safety of occupants and facility personnel, and to deter scavenging and theft of recyclable materials.

Planting & Irrigation, Hardscape and Lighting

- 40) Signage is not a part of this review. All signage conceptually shown or located on the plans are subject to review and approval. The applicant shall apply to the Development Services Center for a Planned Sign Program that will be subject to review in accordance with the Fremont Municipal Code, Article 21, Sign Regulations. In accordance with Section 8-22148.7 (e) [Mixed-use Development; Signs], to create interest and compatibility with the architectural modern appearance of the development, the proposed sign design program shall be of high quality and material. All monument entry signs shall also be included in the proposed Planned Sign Program. Standard channel letter type signs should be avoided, and cabinet type signs shall be prohibited.
- 41) This project must comply with Bay-Friendly Landscape City Council Resolution 2009-40, which requires all private development projects meet any seven (7) of the nine (9) basic required practices. Applicant shall complete and submit the City form titled "Bay-Friendly Basic Practices Checklist for Private Development" when submitting for a building permit.
- 42) Plants shall be selected so that minimal pruning is required to keep the plant in the space allotted. Plants shall be selected that are well adapted to the Fremont environs and that require only occasional irrigation once established.
- 43) Trees planted in stormwater treatment facilities shall be planted on pedestal of compacted native soil.
- 44) All planting areas containing trees shall be free of all Utility Structures (including light standards) and other built features.
- 45) The Irrigation system shall be designed to conserve water per the "Turf and Landscape Irrigation Best Management Practices" handbook, by the Irrigation Association – Water Management Committee. A monthly irrigation water budget shall be provided as part of the design documentation package.
- 46) All retaining walls supporting surcharge shall be reinforced concrete or approved equal. Pressure treated wood retaining walls (including "kicker boards") will be allowed for retaining walls 12-inches or less in height.
- 47) The final design and treatment of the masonry wall, wood fence, screen wall, and metal fence shall be subject to the review and approval of the Planning Division during the building permit review process.

- 48) The applicant's design team shall work with staff to finalize the design of the open space to incorporate to specific needs of the future residents. Specific areas of concern include the location and type of barbecue and picnic facilities, gathering areas, play apparatus, seating types and locations and basketball facilities. Construction details of raised planters, walkways, paths, benches, and other architectural features as appropriate to the project shall be reviewed and approved during the construction document review process.
- 49) Street trees on High Street shall be *Acer rubrum* 'Red Sunset'. Street trees on Main Street shall be *Pyrus calleraana* 'Chanticleer'. All Street trees shall be a minimum 24" box size and will be subject to the review and approval of the City's Urban Landscape Supervisor. Irrigation for street trees shall be connected to the project irrigation system.
- 50) As mitigation for the removal of approximately nineteen (19) existing trees on site, the project shall include a minimum of nineteen (19) 24" box size trees. Mitigation shall increase proportionately, if the number of trees to be removed increases. These trees shall be in addition to all the 24" box, street trees in the City right of way and on-site trees performing a street tree like function, proposed for the project.
- 51) The design team shall work with staff to retain the two California Pepper Trees at the project's High Street entrance. Mitigation for the loss of one or both of these trees shall be one (1) 72" box California Pepper Tree per tree.

Utilities

- 52) Air conditioning condensate must be directed to landscaped areas or connected to the sanitary sewer system after obtaining permission from Union Sanitary District. Properly dispose any anti-algal or descaling agents. Rooftop Equipment (such as exhaust hoods, motors, pumps, etc.): Roof top equipment must drain to the sanitary sewer, or be covered and have no discharge to the storm drain system. The applicant must contact Union Sanitary District for specific connection and discharge requirements.
- 53) Applicants are encouraged to design enclosed parking garages such that floor drains are not required. If floor drains are necessary, stormwater flow must be connected to a stormwater treatment measure approved by the City of Fremont prior to discharge into the municipal storm drain system. With approval from Union Sanitary District, floor drains may connect to the sanitary sewer after passing through an oil-water separator. Approval to discharge to the sanitary sewer will be done on a case-by-case basis. The applicant must contact Union Sanitary District for specific connection and discharge requirements.
- 54) Fire sprinkler test water must be drained to the sanitary sewer system with approval from Union Sanitary District or drain to landscaped areas where feasible. The applicant must contact Union Sanitary District for specific connection and discharge requirements.
- 55) Roof drains must drain away from the building and discharge to a landscape area or stormwater treatment measure hydraulically sized to treat the stormwater runoff, as required.
- 56) A lighting plan, submitted in conjunction with a photometric plan, shall be subject to the review and approval of the Planning Division during the BSPAR review process. All lighting shall be

architectural consistent with the design of the building. In compliance with the Fremont Municipal Code, lighting will be reviewed to avoid substantial light or glare that may have an impact on day or nighttime views in the area. All wall lighting fixtures or sconces shall be of high quality, decorative lighting fixtures with concealed lighting elements. All pole light locations shall be coordinated with the placement of trees to eliminate conflicts between the trees and lights and so that the light is not blocked by the growth of the trees.

Public Safety Requirements

- 57) The onsite fire truck access geometry and grade break transitions shall accommodate the fire truck clearances and shall be subject to the approval of the City Engineer and/or Fire Marshall.
- 58) Driveway /access roads shall meet Fire Department standards for surface type, distance, weight loads, turn radius, grades, and vertical clearance. Vertical clearance shall be 15 feet minimum.
- 59) The applicant shall confirm that the area for the public, on-site fire hydrants, fire department connections (FDC), post indicator valves (PIV) and public water supply connection (DDCV or RPA) have accurate spacing from each other and other utilities. Fire hydrant head assemblies shall be a Clow Model 860 or equivalent.
- 60) The applicant shall install an N.F.P.A. 13/13R fire sprinkler system complying with local amendments. Also a standpipe system for building 1 will be required with outlets at the garage level and 2nd floor. Residence sprinkler heads shall be used in the dwelling/guest portions of the building. The sprinkler system shall provide protection to at least all of the following areas garages, carports, bathrooms, concealed spaces, water heater/furnace rooms, closets, laundry rooms, attic spaces, under walks, or overhangs, balconies or deck greater than four feet in depth, floor landings if wholly or partial enclosed, covered guest carports or other areas as required.
- 61) The applicant shall install a monitored fire alarm/sprinkler monitoring/ system as required. The system must comply with N.F.P.A. 72 and The City of Fremont Fire Alarm Standard 25A per local ordinance #32-2007.
- 62) Separate permit is required for the underground fire service, fire sprinkler, standpipe system, fire alarm systems, assembly areas and type 1 hoods.
- 63) Prior to installation, plans and specifications for the underground fire service line must be submitted to the Plans and Permit Center for approval by the Fire Department and Building Department.
- 64) The applicant shall have a key box (Knox brand) located outside of buildings/gates and provide keys to the Fire Department so they may gain access. Vehicle gates shall use Knox lock or keyed over-ride switch. Gates shall also have an infrared receiver installed. Both gates shall have an infrared receiver installed.
- 65) Building address is to be plainly legible and visible from the public street. These numbers shall contrast with their background.

- 66) The applicant must immediately notify the Fremont Fire Department, Hazardous Materials Unit of any underground pipes, tanks or structures; any suspected or actual contaminated soils; or other environmental anomalies encountered during site development activities. Any confirmed environmental liabilities will need to be remedied prior to proceeding with site development.
- 67) The applicant shall provide fire hydrant(s) with the required fire flow on site prior to construction or storage of combustible materials. Fire hydrant jumper lines must be at least 6 inches in diameter. This must be completed and inspected before any construction or material storage will be allowed.
- 68) The applicant shall provide a 20 ft wide all weather-paving surface (paving) for emergency vehicle access within 150 feet of all construction or combustible storage. Fire Department access must be provided and maintained serviceable prior to and during construction, this access shall be provided before any combustible storage will be allowed.

Grading

- 69) The developer shall provide for a functional system to control erosion and siltation during and after grading subject to review and approval by the City Engineer. An erosion and sediment control plan shall be included as part of the grading plans.
- 70) Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed.
- 71) A disposal site for the off-site haul dirt materials or source for the import fill shall be approved by the City prior to the approval of the building permit. The off-site haul truck route for the excess dirt or import fill shall be subject to the approval of the City Engineer.
- 72) Grading operations shall be in accordance with recommendations contained in the required soils report and shall be supervised by an engineer registered in the State of California to do such work.
- 73) Approval of this Preliminary Grading Plan does not extend to the final detailed design approval necessary to be accomplished in connection with the development plans.
- 74) The applicant may be allowed grading deviation up to a maximum of one foot (plus or minus) between the preliminary grading plan and the final grading plan. Deviation over one foot may be referred to the Planning Commission, subject to approval of the City Engineer.
- 75) All cut and fill slopes shall be constructed to a maximum of three horizontals to one vertical (3:1).

Streets, Right of Way and Public Utilities

- 76) The developer shall dedicate right-of-way and install complete street improvements for Main Street across the project frontage. Main Street is a two-lane collector street, with a right-of-way of 64 feet, a pavement width of 40 feet.

- 77) The developer shall dedicate right-of-way and install complete street improvements for High Street across the project frontage. High Street is a two-lane collector street, with a right-of-way of 60 feet, a pavement width of 38 feet, which transitions to a right-of-way of 56 feet, and a pavement width of 38 feet at the intersection of High Street and Main Street.
- 78) The developer shall prepare street improvements plans for Main and High Street in accordance with the Street Improvement Ordinance. Street improvement plans shall be submitted for review concurrent with the building permit application. The developer shall also enter into an agreement to complete the street improvements.
- 79) Precise geometry and location of all driveways shall be subject to approval of the City Engineer. If the existing trees near the High Street driveway entrance cannot be saved, the driveway alignment is subject to approval of the City Engineer.
- 80) A streetlight plan and joint trench plan shall be submitted with the improvement plans for review. The streetlight plan and joint trench plan is subject to approval by the City Engineer prior to the building permit issuance.
- 81) Existing overhead utilities within the project frontage on Main Street shall be removed. The relocation of the pole on High Street shall be relocated along the project frontage within appropriate utility easements. The new utility locations are subject to review and approval by the City Engineer.
- 82) The developer shall apply for and obtain an encroachment permit for all improvements within the public right-of-way. The encroachment permit shall be issued concurrently with the building permit.
- 83) Proposed curb elevations for the street system shall not be less than 1.25 feet above the hydraulic grade line (design water surface) and at no point should the curb grade be below the energy grade line. On-site grades are to be a minimum of 0.75 feet above the hydraulic grade line.
- 84) The applicant shall submit a separate striping and signing plan for the roadway improvements on Main Street and High Street. Striping and signing plan shall conform to CA MUTCD, Standard Plans and Specifications and City Standard Details. The final striping and signing plan shall be subject to approval of the City Engineer.

Stormwater Facility Design

- 85) Stormwater Treatment in the public right of way is subject to City of Fremont staff approval, including Environmental Services, Engineering and Landscaping divisions.
- 86) Public Right of Way Stormwater Treatment: Stormwater runoff from the public right of way shall be treated separately from private stormwater.
- 87) The project storm drain design shall be subject to review and approval of both the City Engineer and the Alameda County Flood Control and Water Conservation District. The hydraulic and hydrology study for the project shall include a capacity analysis of the storm drain in Main Street

to which the project proposes to connect. Downstream flood hazards shall not be increased, as the site is located upstream of Laguna Creek, a designated special flood hazard area.

- 88) The provided Storm Water Treatment Plan is approved in concept only. Final approval is subject to the developer providing the necessary plans, details, and calculations that demonstrate the plan complies with the Alameda Countywide NPDES Municipal Stormwater Permit, subject to City Engineer approval prior to building permit approval.
- 89) Prior to issuance of a building permit for land disturbance greater than one acre, the developer is to provide evidence that a Notice of Intent has been filed and with the State of California Water Resources Control Board. Evidence shall include the WDID number assigned by the State. The developer is responsible for insuring that all contractors are aware of all storm water quality measures contained in the Storm Water Pollution Prevention Plan (SWPPP).
- 90) The design team shall work with staff to finalize the design of the Stormwater Treatment Facilities so that they are an attractive addition to the project.
- 91) The Primary Treatment BMP Must Be Landscaped Based: Stormwater runoff from all impervious surface areas (100%) must be treated prior to entering the City storm drain system. As detailed in the Administrative Regulation in Appendix D of the City of Fremont NPDES Requirements document, at least 50% of the impervious surface area must be treated by landscape-based treatment measures.
- 92) Limitation on the Use of Hydrodynamic Separators (E.G. Vortex or Centrifugal separators) Hydrodynamic separators do not meet the criteria for stormwater treatment to the maximum extent practicable (MEP) when used as stand-alone treatment. Hydrodynamic separators may be used as part of an overall treatment train or BMP to meet MEP, provided that at least 50% of the site runoff is treated through landscape-based treatment measures.
- 93) Stormwater Pollution Prevention Plan, or SWPPP (Prior to Construction Permit Approval): Projects that are required to file for an NOI must complete a Stormwater Pollution Prevention Plan. One complete copy of the SWPPP must be submitted to the City for review.
- 94) Sediment and Erosion Control Plan (Prior to Construction Permit Approval) For all projects that have exposed soil, an erosion and sediment control plan completed in conformance with the most recent version of the Water Board's Erosion and Sediment Control Field Manual must be submitted for review and approval by the City. Include the erosion and sediment control plan as part of the project plans.
- 95) Notice of Intent, or NOI (Prior to Construction Permit Approval): Prior to the commencement of any clearing, grading or excavation resulting in land disturbance of one acre or more, the developer must submit evidence that a Notice of Intent (NOI) has been submitted to the State Water Resources Control Board. Evidence must include the Waste Discharge Identification (WDID) number assigned by the State. The developer is responsible for ensuring that all contractors are aware of and implement all best management practices (BMPs) contained in the Stormwater Pollution Prevention Plan, or SWPPP (see below), associated with the NOI. The present status of the project calls for less than one acre of impervious surface area, however, if land disturbance is 1 acre or more, this requirement must be met.

- 96) All projects that create or replace impervious surface area must incorporate stormwater treatment measures to the maximum extent practicable (MEP). Projects that create or replace 10,000 square feet or more of impervious surface area (including rooftops, trash enclosures, parking areas, patios, etc.) are required to incorporate hydraulically sized post-construction stormwater treatment measures into the project design. The treatment measures must be hydraulically sized in accordance with the National Pollutant Discharge Elimination System (NPDES) Permit issued by the San Francisco Bay Regional Water Quality Control Board (Water Board). Project design must include appropriate stormwater treatment measures which must be reflected in the site plan, utility plan, landscape plan, and grading plan. Insufficient preliminary design work and attention to the prescribed design parameters may require revisions and modifications to the project plans to ensure compliance.
- 97) A stormwater management plan (SWMP) must be prepared that demonstrates inclusion of post-construction stormwater treatment measures and if applicable, hydromodification management (HM) measures to treat all impervious surfaces in compliance with NPDES Provision C.3 standards before runoff leaves the project site. A draft SWMP indicating proposed BMP strategies must be prepared and submitted with the initial application package. The final SWMP with complete hydraulic sizing calculations must be submitted prior to issuance of building permits or improvement plans.
- 98) In addition to the above: Projects that create or replace 1 acre or more of new impervious surface must also be reviewed to determine if drainage from the site would be received by facilities or waters susceptible to hydromodification as defined in the most current NPDES permit. The applicant has indicated that this project has been modified to reduce impervious surface to a combined total which falls below this threshold. If the project increases impervious surface area above the 1 Acre threshold, this project shall be required to meet additional requirements.

During Construction Conditions (Conditions that must be satisfied during construction)

- 99) The contractor must provide a letter to the City of Fremont Environmental Services Division certifying that the soil used in landscape based treatment measures meets the intent of the specifications included in the most recent version of Alameda Countywide Clean Water Program's C.3 Stormwater Technical Guidance Manual. The letter must specifically address the requirement that the dewatering soils meet the percolate rate of 2 -10 inches per hour and treatment soils meet the percolate at a rate of 5 – 10 inches per hour.
- 100) All public and private storm drain inlets must be stenciled "No Dumping Drains to Bay" with thermoplastic stencils purchased from the City of Fremont Environmental Services Division. Alternative inlet stencils or markings may be permitted, subject to approval by the City.
- 101) This project will generate debris that must be recycled, including scrap metal, wood, and asphalt/concrete. 100% of the asphalt/concrete must be reused or recycled, and at least 50% of the remaining debris generated from the project must be reused or recycled. To further increase the number of points earned for the green point checklist, increase the amount of debris recycled from 50%.

- 102) During construction, the applicant may contract with any recycling company licensed to do business in Fremont for salvage or recycling of separated construction and demolition materials. Separated material destined for recycling may not contain more than 10% by weight of solid waste or other non-recyclable material (FMC IV, Ch 2, 4-2303).
- 103) Plant and tree debris should not be mixed with other wastes. Several trees are scheduled to be removed. Plant and tree debris must be chipped on site or taken to a grinding, composting or fuel facility. Effective January 1, 2009, it is illegal to dispose of plant debris in an Alameda County landfill.
- 104) Construction hours will be limited in accordance with Section 8-2205 of the Fremont Municipal Code, and notes to this effect shall be placed on the cover sheet of the construction plans and on an all-weather notice board (format and content specified by City) conspicuously placed adjacent to the most visible right of way for the duration of the construction activity as follows:
- Monday-Friday, 7 a.m. to 7 p.m.
Saturday & Holiday, 9 a.m. to 6 p.m.
Sunday, no construction activity allowed

Requirements to be Completed Prior to Request for Final Inspection

- 105) Within thirty days of completion of the work, the applicant must file a *Waste Disposal & Diversion Report* documenting actual diversion and disposal of construction and demolition debris, along with receipts or weight tags.
- 106) Prior to release of building for occupancy, the Project Landscape Architect will submit a letter to the City of Fremont certifying the planting and irrigation have been installed in conformance with the approved planting and irrigation plans, subject to the review and approval of the City Landscape Architect.
- 107) Prior to building occupancy or acceptance of improvements, the project civil engineer or landscape architect must submit a statement certifying that all post-construction stormwater treatment measures have been installed properly.

Ongoing Operational Requirements.

- 108) Weekly municipal solid waste (MSW) and recycling collection service is required for all occupied commercial and residential properties, and is provided by Allied Waste Services (AWS) on an exclusive franchise basis.
- 109) All private projects that incorporate post-construction stormwater treatment measures and/or HM measures must enter into an agreement with the City of Fremont to operate and maintain said treatment measures in perpetuity. The Stormwater Treatment Measures Maintenance Agreement (also called an Operations & Maintenance Agreement or O&M Agreement) is a legal document that is recorded against the title of the property. Responsibility for the Operation and Maintenance Agreement must be legally transferred to all subsequent property owners. The approved and notarized O&M Agreement must be received by the City prior to permit issuance or final map approval.

- 110) All site-specific operational stormwater best management practices (BMPs) must be implemented. City of Fremont staff may conduct stormwater inspections as frequently as annually to verify compliance with BMPs. Failure to comply with stormwater BMPs may result in fines and other penalties.

END OF CONDITIONS

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PLANNING COMMISSION STAFF REPORT JUNE 25, 2009

Project: GENERAL PLAN AMENDMENT-HOUSING ELEMENT UPDATE (PLN2005-00190)

Proposal: Amend the City's General Plan by adopting an updated Housing Element.

Recommendation: Recommend Approval to City Council.

Location: Citywide.

People: Dan Schoenholz, Policy and Special Projects Manager, Community Development Department (510) 494-4438; dschoenholz@fremont.gov
Taryn Hanano, Staff Planner, (510) 494-4555; thanano@fremont.gov

Environmental Review: A Negative Declaration has been prepared and circulated for this project.

EXECUTIVE SUMMARY:

Pursuant to State law, the City of Fremont must adopt an updated Housing Element of the City's General Plan by June 30, 2009. On March 9, 2009, pursuant to the Commission's recommendation, the City Council directed staff to submit the draft updated Housing Element to the State Housing and Community Development Department (HCD) for their required review. HCD provided comments on the draft Element to the City by a letter dated May 8, 2009.

Staff has revised the draft Element to address HCD's comments. Staff is requesting that the Commission recommend to the City Council that it amend the City of Fremont General Plan by adopting the updated Housing Element.

BACKGROUND:

The City is charged by State statute with responsibility for updating its Housing Element. A Housing Element is a planning document (part of the General Plan) that guides the City's housing efforts. The Element not only provides general goals, objectives and policies but also proposes implementation programs to meet the stated goals and objectives. State law prescribes much of the content for the Housing Element. Housing Elements must identify and analyze existing and projected housing needs, effectiveness of the past housing element, constraints to the production of housing, and must also contain goals, policies, quantified objectives, and scheduled programs for the preservation, improvement and development of housing.

Based on these legal requirements, staff prepared a draft Housing Element for submittal to HCD. The Commission considered the draft at its February 12, 2009 meeting. The staff report for the February 12 meeting contains a detailed description of the City's public outreach and the major components of the updated Housing Element, and is included as Informational Item 1. The Commission recommended

submittal of the draft, and the City Council concurred with the Commission's recommendation at its March 9, 2009 meeting and directed staff to submit the draft to HCD.

Existing law requires the HCD to evaluate each housing element for consistency with State law including, among other things, a requirement for a program setting forth a five-year schedule of actions the local government is undertaking or intends to undertake to achieve the goals of the housing element. Those actions include the identification of sites to be made available to encourage the development of a variety of types of housing for all income levels.

During the HCD review period, Advocates for Affordable Homes in Fremont submitted a letter to HCD outlining several comments and concerns regarding the City's draft Housing Element. Eden Housing also sent a letter to HCD supporting the draft Housing Element. Staff submitted a letter providing the City's perspective on the issues raised by Advocates for Affordable Homes. These letters are included as Informational Items 2-4.

By letter dated May 8, 2009, HCD provided a number of comments on the draft Housing Element. HCD recommended changes to ensure that the adopted Housing Element complies with State law. A copy of HCD's letter is included as Informational Item 5.

Staff has revised the draft Housing Element based on the comments received from HCD. These modifications are summarized in the following matrix, and the text changes are highlighted in the Housing Element, included as Exhibit "A."

HCD COMMENT	CITY RESPONSE	LOCATION OF CHANGE IN HOUSING ELEMENT
Housing Needs, Resources, and Constraints		
<u>Entitled Projects</u> —Analyze anticipated rent and sales prices when calculating affordable housing availability	Removed sites/units from inventory to reflect specific proposals for entitled projects. Added some commercially-designated sites to inventory where sites could be developed at 30 d/u acre by right under the City's mixed use ordinance.	Table 4-2 and related text.
<u>Realistic Capacity</u> —Include analysis and description of methodology used by City to calculate realistic development capacity for both residential and commercial sites in inventory.	Analysis and description of methodology added.	Section 4.3.2
<u>Small Sites</u> —Evaluate realistic potential for residential development on small sites that form part of City's inventory.	Additional analysis and description provided.	Section 4.3.2 Tables 4-2 and 4-3

<u>Suitability of Non-Vacant Sites</u> —Element must describe existing uses of underutilized sites and describe development trends, market conditions, and regulatory incentives and standards.	Additional analysis and description provided.	Tables 4-2 and 4-3 (each site described individually)
<u>Environmental Constraints</u> —Include general description of environmental constraints in City.	Description provided.	Section 4.3.6
<u>Fees and Exaction</u> —Add description of planning and processing fees for typical multifamily housing development. Description could include information on fee reduction included in the Local Stimulus Package adopted by the City Council.	Description added.	Table 5.2.4
<u>Local Processing and Permit Procedures</u> —Describe and analyze the City's permit processing and approval procedures by zone and housing type.	Description and analysis added.	Section 5.2.6 and Tables 5-3, 5-4 and 5-5
<u>Inclusionary Housing</u> —Include complete description and analysis of the implementation framework for the City's Inclusionary Housing Ordinance.	Description and analysis added.	Section 5.2.5
<u>Non-Governmental Constraints</u> —Provide more complete analysis.	More complete analysis provided.	Section 5.3
<u>Units At-Risk of Conversion</u> —Estimate cost of replacing and preserving at-risk units and include list of entities qualified to acquire at-risk units.	Estimate and list of entities included.	Section 3.6.7 Appendix A
Quantified Objectives		
Provide quantified objectives by income category.	Matrix providing quantified objectives by income category included.	Section 3.7.3 Table 4-1 and 4-6
Housing Programs		
Identify adequate sites for construction of affordable housing; alternately, include a program to provide sufficient sites by rezoning.	Adequate sites identified.	Table 4-2
Describe the amount and uses of funds in the Redevelopment Agency's Low and Moderate Income Housing Fund	Description added.	Chapter 6, Action 3.01-A
Revise action 3.04-E to provide a specific timeframe for review of the City's fee structure.	Action 3.04-E revised.	Chapter 6, Action 3.04-E

Revise action 4.01-A to include strategy for quickly moving forward if at-risk units noticed to convert to market-rate uses.	Program revised	Chapter 6, Action 4.01-A
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Inclusionary Housing Ordinance

In addition to the revisions made in response to HCD's comments, staff has also revised Action 3.01-B, Modify Inclusionary Housing Ordinance. Subsequent to submittal of the draft Element to HCD, a decision was rendered by the California Court of Appeal for the Fifth Appellate District in *Building Industry Association of Central California v. City of Patterson*. This decision held that for an in-lieu fee paid by developers as part of an inclusionary housing program, there must be a reasonable relationship between the amount of the fee and deleterious public impact caused by the housing development on which it is imposed, as determined by a nexus study. Previously, case law treated inclusionary requirements as a police power like other zoning requirements, and no nexus study was required.

The California Supreme Court is being asked to "de-publish" the decision, which would prevent it from being cited as a precedent. However, in the interim the City is putting revision of the Inclusionary Housing Ordinance on hold. Staff has modified Action 3.01-B and related text to reflect the legal uncertainty surrounding the proposed revision.

ENVIRONMENTAL REVIEW:

An Initial Study and Draft Negative Declaration have been prepared and circulated for this project. The environmental analysis did not identify any concerns regarding potential environmental impacts. The draft Negative Declaration is enclosed as Exhibit "B" and the Initial Study is provided as Informational Item 6.

PUBLIC NOTICE AND COMMENT:

A total of 239 notices regarding the Planning Commission meeting were mailed to parties who have requested to be notified regarding City meetings and actions related to housing programs. In addition, a 1/8 page public hearing notice and notice of intent to adopt the draft Negative Declaration was published by The Tri-City Voice on June 10, 2009.

In addition, e-mail notification was provided to the General Plan mailing list, which includes over 800 e-mail addresses of individuals who have requested to be kept informed of public meetings related to the General Plan Update.

ENCLOSURES:

Exhibits:

Exhibit "A"	<u>Draft Housing Element (Track Changes; additions and deletions);</u>
Exhibit "B"	<u>Draft Negative Declaration.</u>

Informational Items:

1. [February 12, 2009 Planning Commission Staff Report;](#)
2. [Letter from Advocates for Affordable Homes to HCD;](#)
3. [Letter from Eden Housing to HCD;](#)
4. [Letter from City of Fremont to HCD;](#)
5. [May 8, 2009 Comment Letter from HCD.](#)
6. [Initial Study.](#)

RECOMMENDATION:

1. Hold public hearing.
2. Recommend that the City Council adopt a Negative Declaration and find this action reflects the independent judgment of the City of Fremont as shown on Exhibit “A.”
3. Recommend that the City Council adopt the updated Housing Element to the General Plan as shown in Exhibit “B.”
4. By motion, recommend the Council direct staff to submit the draft Housing Element to the State Housing and Community Development Department for their final certification.

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PLANNING COMMISSION STAFF REPORT JUNE 25, 2009

Project:	MONTESSORI PRESCHOOL/DAYCARE FACILITY (PLN2009-00217)
Proposal:	To consider a Conditional Use Permit to allow a preschool and daycare facility to occupy an existing commercial building.
Recommendation:	Approve based on findings and subject to conditions.
Location:	4511 Peralta Boulevard in the Centerville Planning Area APN: 501-0551-048-00 (See aerial photo on next page)
Lot Size:	0.6 acres (\pm 26,000 square feet)
Building Size:	4,226 square feet
People:	Harpreet Grewal, Applicant Asham, LLC (c/o: Shahryar Soroosh), Property Owner Steve Kowalski, Staff Planner, (510) 494-4532; skowalski@fremont.gov
Environmental Review:	This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15303 (Conversion of an Existing Structure).
General Plan:	Medium Density Residential 11-15 d.u./acre
Zoning:	P-2005-73(CSPC)

EXECUTIVE SUMMARY:

The applicant is proposing to operate a preschool and daycare facility at an existing commercial building located at 4511 Peralta Boulevard. The building is currently vacant and measures 4,226 square feet in area. The site is located in Planned District P-2005-73(CSPC), which is intended to allow for medium density residential development consistent with the density and development standards of the R-3-15 Multi-Family Residence zoning district. Pursuant to Section 8-2751.3 of the Zoning Ordinance, nursery schools and similar uses such as daycare facilities may be permitted in the R-3-15 zoning district subject to approval of a Conditional Use Permit by the Planning Commission. Staff recommends that the Planning Commission approve this Conditional Use Permit application based on the findings and subject to the conditions contained in Exhibit "B", attached to this staff report.

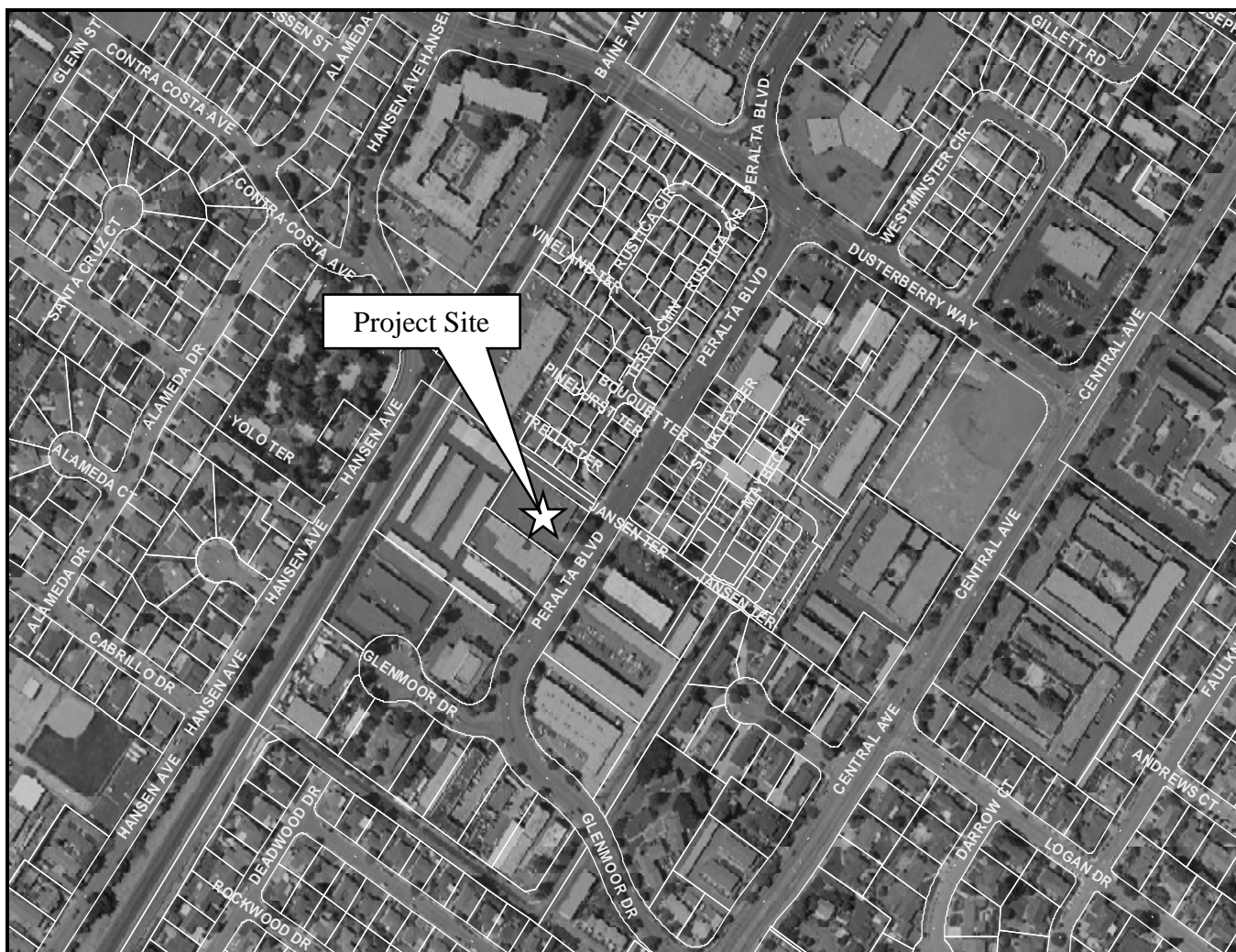


Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES:

- North: Single-family residential [Planned District P-95-3(CSPC)]
- South: Light industrial [I-L(CSPC) zone]
- East: Light industrial [I-L(CSPC) zone] and Single-family residential (Planned District P-2005-73(CSPC))
- West: Light industrial [I-L(CSPC) zone]

BACKGROUND AND PREVIOUS ACTIONS:

The subject commercial building was originally built in 1965 in accordance with the standards of the property's commercial zoning designation at the time. On June 8, 2000, the Planning Commission approved a Conditional Use Permit (PLN2000-00259) allowing a religious facility to occupy the site. The building eventually became vacant during which time the I-L zoning district was amended to allow religious facilities subject to approval of a Zoning Administrator Permit instead of a Conditional Use Permit, but the building was vacant long enough that the Conditional Use Permit for the religious facility eventually lapsed.

On December 14, 2004, as part of Housing Element Implementation Program #18, the City Council re-designated the property for medium density residential development in the Land Use Element of the General Plan, and rezoned the parcel to a Planned District (P-2005-73) consistent with the standards of the R-3-15 Multi-Family Residence zoning district. The Planned District approval included a condition that future residential projects on the site would require a Finding for Site Plan and Architectural Approval by the Planning Commission.

Shortly thereafter, on February 10, 2006, another religious facility obtained approval of a Zoning Administrator Permit to occupy the building (PLN2006-00184). While this facility occupied the site, the property owner obtained approval from the Planning Commission for a Tentative Subdivision Map (Tract Map 7880) and a Finding for Site Plan and Architectural Approval for a 10-unit townhouse development (PLN2007-00169). A building permit was never submitted to the City for this development, however, and on April 28, 2009 staff received the subject application for a preschool and daycare facility at the site.

PROJECT DESCRIPTION:

The applicant is proposing to operate a preschool and daycare facility in an existing building in the Centerville Planning Area. The building was originally built to house commercial/light industrial uses but was most recently used as a church. In order to convert the building into a preschool and daycare facility, the applicant must install new multi-fixture bathrooms for both genders, as well as a large, enclosed outdoor play area behind the building. The applicant is also proposing to enclose much of the existing front yard with a new 5' tall decorative metal fence to provide additional secure outdoor play area on the property.

The existing parking lot will be redesigned to provide room for an outdoor play area, a 6-foot wide landscape planter along the rear property line, and a new 20-foot wide drive aisle through the site in order to meet current minimum Fire Department access requirements. The existing diagonal parking stalls alongside the building will also be reconfigured to a single row of 90-degree parking to allow for continuous Fire Department access throughout the site. A new trash enclosure designed to match the architecture of the building will be constructed in the rear corner of the parking lot, and the existing landscaping in the front yard of the property will be improved with new lawn, plants and flowers, and all existing trees on the property and within the public right-of-way will be preserved. The exterior of the building will be repainted to help further improve the appearance of the property.

The facility will contain four separate classrooms, a reception area/lobby, an administrative office, and a kitchen and break room for the facility's staff. The kitchen will also be used to prepare lunches and snacks for the children. The facility will operate from 7:00 AM to 6:00 PM Monday through Friday with a student enrollment consisting of 75 children aged 2-6 years. Enrollment would be open to the general public. The children would be served lunch and snacks throughout the day, typical of meal services provided in standard preschools.

PROJECT ANALYSIS:

General Plan Conformance Analysis

The General Plan land use designation for the site is Medium Density Residential 11-15 Dwelling Units per Acre. This land use designation is intended to provide for small-lot attached or detached single-family residential developments such as townhouses or zero lot line units, while also allowing for uses that are compatible with such development such as schools, churches and parks that are designed in a way so as not to impact the surrounding residential properties. Staff believes that the proposed use of the site as a preschool and daycare facility would be consistent with the General Plan in that they conform to the following Land Use Goal:

- **Land Use Policy 1.1** – *Schools, Childcare Centers, Public and Semi-Public Facilities (e.g., churches) and Nursing Care Facilities...may be allowed [in areas designated Residential in the General Plan], although conditions may be established to limit the impacts of these uses on residents.*

Analysis

The intent behind this land use goal is to allow for family-oriented and child-oriented land uses such as schools, parks and childcare services to locate within residential districts for the convenience of families and parents of school-aged children. The General Plan recognizes the importance of allowing such uses to locate in residential districts as a means of establishing well-rounded residential neighborhoods, provided they do not have an adverse impact on the surrounding neighborhood. In this case the site has significantly more parking than is required by the Municipal Code for a preschool/daycare facility, as well as additional on-street parking along the property's street frontage. Therefore, vehicular traffic from parents and staff coming and going from the site will not be noticeable to the surrounding properties or obstruct traffic along Peralta Boulevard. In addition, its location in close proximity to numerous residential developments in the Centerville area make the site convenient for parents who need to drop off and pick up their children while commuting to and from work and those who are able to walk with their children from the surrounding neighborhoods.

Zoning Compliance Analysis

The project site is located within Planned District P-2005-73(CSPC). This Planned District was established to allow for the same land uses and development densities and standards as the R-3-15 zoning district. In accordance with Section 8-2751.3 of the Municipal Code, preschools and similar uses such as daycare facilities are permitted in the R-3-15 zoning district subject to approval of a conditional use permit by the Planning Commission. Pursuant to Section 8-22509 of the Municipal Code, the Planning Commission must make the following findings in order to approve a conditional use permit:

- (a) The proposed use is consistent with the General Plan;
- (b) The site is suitable and adequate for the proposed use;
- (c) The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services;
- (d) The proposed use would not have a substantial adverse economic effect on nearby uses;
- (e) The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large; and
- (f) The project will comply with the provisions of Article 27 of the Zoning Ordinance (Site Plan and Architectural Approval).

Discussion:

- (a) General Plan Consistency: As discussed in the General Plan Conformance Analysis section above, the proposed use is consistent with the General Plan's policy to allow public and semi-public family- and child-oriented uses such as schools and daycare facilities within residential districts subject to conditions designed to ensure that such uses do not have a negative impact on the neighborhood. A preschool and daycare facility at the subject site would provide a convenient service for parents with young children who need such services while not adversely impacting the surrounding neighborhood. The site is large enough to accommodate the required parking and playground area required for the proposed use, and the facility will only be open during the workweek from 7:00 AM to 6:00 PM, not on evenings, weekends or holidays.
- (b) Site suitability and adequacy: The project site is well suited for the proposed use in that it is located in close proximity to many of Centerville's residential neighborhoods. Furthermore, there is more than enough parking on site for the proposed use and there is parallel on-street parking directly in front of the site with enough room for another 4-5 vehicles for overflow parking in the event that a large number of parents arrive at the site simultaneously. In addition, the site is capable of being modified to meet all of the applicable Building and Fire/Life Safety codes governing the proposed change of use from a church to a preschool and daycare facility.
- (c) Impact on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services: The proposed student enrollment would be 75 children. The estimated trip generation rate for a preschool/daycare facility with 75 children is 62 vehicle trips during the PM peak hour and 336 trips per weekday. This would result in a net increase of 60 PM peak hour trips and 297 daily trips over the number of trips generated by the religious facility that previously occupied the site. According to the Transportation Engineering Division, Peralta Boulevard currently experiences little congestion during the PM peak period when the road network is at its busiest; therefore the additional trips generated by the proposed change in uses will not result in a significant increase in congestion on the adjacent roadway network.

The proposed school requires a total of 9 on-site parking spaces. The site currently contains 44 spaces, but a large number of these will be removed to accommodate the new playground area and landscape planter along the rear property line. In addition, the existing drive aisle through the site does not meet the current Fire Department access width requirement; therefore, it must be widened to a continuous width of 20 feet, resulting in the loss of one row of existing parking spaces alongside the building. Despite these reductions, however, the site will still contain 20 spaces, eleven more than is required by the Zoning Ordinance. In addition to this surplus, there is on-street parking along the front of the property in case a large numbers of parents arrive at the school to drop off or pick up their children simultaneously.

- (d) Economic impact on nearby uses: Impact on other similar facilities nearby should be negligible in that the only other preschool in close proximity is located at a nearby church, and that facility will most likely continue to be patronized by parents who belong to the church. Parents who send their children to the proposed facility would be those who specifically want to enroll their children in a Montessori facility.
- (e) Impact to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large: The applicant is proposing a total student enrollment of 75 children per day, Monday through Friday. The business hours of the school will resemble standard schooling hours and only remain open until 6:00 PM so that parents may drop off their children on the way to work and pick them up on the way home only, with no late evening or weekend schooling taking place. And, as mentioned previously, the site has more than enough parking for the proposed use, with additional on-street parking available along the site's frontage.
- (f) Compliance with Article 27 of the Zoning Ordinance: If the Planning Commission chooses to approve the Conditional Use Permit, then the applicant will be required to implement fire safety, parking lot, trash enclosure and landscaping upgrades in accordance with the current codes governing educational/assembly uses. Building permit approval for these upgrades will result in the project complying with Article 27 of the Zoning Code.

Based on staff's analysis of the application, all of the findings prescribed by Section 8-22509 can be made in support of the proposed project. As such, staff recommends the Planning Commission approve the application based on the findings and subject to the conditions contained in Exhibit "B".

Environmental Review:

This project qualifies as a Class 3 categorical exemption pursuant to Guideline 15303 of the California Environmental Quality Act (Conversion of an Existing Structure from One Use to Another).

PUBLIC NOTICE AND COMMENT:

Public hearing notification is required for the entitlement being requested. A total of 867 notices were mailed to the owners and occupants of all property (including tenants of rental units) located within 1,000 feet of the project site on Friday, June 12, 2009. A Public Hearing Notice was also published in *The Tri-City Voice* Wednesday, June 10, 2009.

ENCLOSURES:

Exhibits:

Exhibit "A"	<u>Proposed School Plans (Title Sheet, Plot Plan, Floor Plan, Elevations)</u>
Exhibit "B"	<u>Recommended Findings and Conditions of Approval</u>

Informational Items:

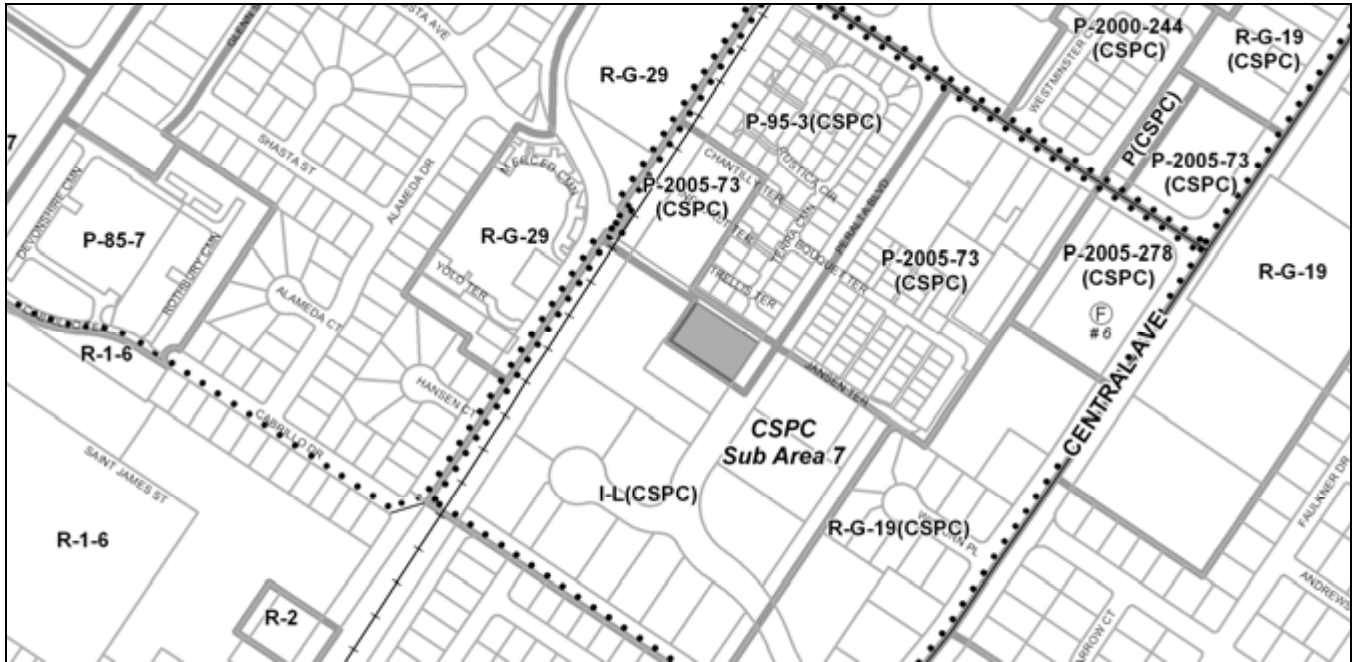
Informational 1	<u>Project Statement prepared by Applicant</u>
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RECOMMENDATION:

1. Hold public hearing;
2. Find that the project is exempt from the California Environmental Quality Act (CEQA) per CEQA Guideline 15303 which exempts projects involving the conversion of an existing facility from one land use to another when the new use is consistent with the current zoning and General Plan land use designation of the site;
3. Find that PLN2009-00217 is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the Land Use Element of the General Plan, as enumerated within the staff report; and
4. Approve PLN2009-00217 as shown in Exhibit "A", based on the findings and subject to the conditions contained in Exhibit "B".

Existing Zoning

Shaded Area represents the Project Site



Existing General Plan



Exhibit "B"
Findings and Conditions of Approval
PLN2009-00217 – Montessori Preschool/Daycare Facility CUP
4511 Peralta Boulevard

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated June 25, 2009, incorporated hereby:

Conditional Use Permit:

- a. The proposed use is consistent with the General Plan in that a preschool and childcare facility at the subject site would provide a convenient service for parents with young children who need preschool/daycare services in the Centerville area while not adversely impacting the surrounding neighborhood in that its hours will be strictly limited and the site has a large surplus of parking in the event that a large number of parents arrive to drop off or pick up their children simultaneously;
- b. The site is suitable and adequate for the proposed use in that it is located in close proximity to many of Centerville's residential neighborhoods, it features more than enough parking on site for the use with additional on-street parking along the lot's frontage, and the property is large enough to accommodate the site modifications needed in order to bring it into compliance with all current Building and Fire/Life Safety Code requirements;
- c. The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services in that there is a surplus of parking available on the site and on-street parking adjacent to the property in case large numbers of parents arrive at the facility to drop off or pick up their children simultaneously, and the project will not generate a significant increase in daily or afternoon peak hour vehicle trips on the surrounding roadway network or impact existing bicycle or transit routes in any way;
- d. The proposed use would not have a substantial adverse economic effect on nearby uses in that the only other preschool in close proximity is located at a nearby church, and that facility will most likely continue to be patronized by parents who belong to the church, whereas parents who send their children to the proposed facility would be those who specifically want to enroll their children in a Montessori program/facility;
- e. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large in that the site has more than enough parking and will be made to comply with current Fire Department life safety/accessibility requirements, and the business hours of the school will be such that parents may drop off their children on the way to work and pick them up on the way home only, with no late evening or weekend schooling taking place; and

- f. The project will comply with the provisions of Article 27 of the Zoning Ordinance in that the applicant will be required to obtain Building/Site Plan and Architectural approval for all interior and exterior modifications or upgrades that must be made to the building and/or site in accordance with current Building and Fire Code requirements to allow for the use of the property as a preschool and daycare facility.

CONDITIONS OF APPROVAL:

General Conditions

1. The approval of this conditional use permit shall allow the establishment and operation of a preschool and daycare facility on the subject property allowing up to seventy-five (75) children aged 2-6 years, as shown in Exhibit "A", subject to compliance with all of the conditions of approval set forth herein.
2. Approval of this conditional use permit shall supersede the previous Conditional Use Permit PLN2000-00259 and Zoning Administrator Permit PLN2006-00184 for the property and rescind these approvals, but it shall not supersede or rescind Tentative Tract Map 7880 or Finding for Site Plan and Architectural Approval PLN2007-00169.
3. Minor modifications to this conditional use permit may be made subject to review and approval by the Planning Director if such modifications are in keeping with the intent of the original approval. However, the Planning Director may refer any modification to the Planning Commission if he/she feels the request is of such a nature that it warrants consideration by the Commission.
4. These conditions of approval shall be binding on the applicant and all successors in interest. In the case of a transfer of ownership of the preschool and/or daycare facility, the new owner(s) shall obtain and sign a copy of the approved conditional use permit acknowledging that he/she/they have read and understand all of these conditions of approval and submit said signed copy to the Planning Division.
5. If the Planning Director finds evidence that any of the following conditions of approval have not been fulfilled or that the use has resulted in a substantial adverse effect on public health, safety, and/or general welfare, he/she may refer the conditional use permit to the Planning Commission for review. If upon such review the Planning Commission finds the project has resulted in a substantial adverse effect on the public health, safety and/or general welfare, the Commission shall reserve the right to modify or revoke the approval of the use.
6. The applicant shall comply with the provisions of the permits required from any state or regional agencies having jurisdiction over any aspect of the proposal.
7. The applicant acknowledges and agrees that, although the facility may be validly licensed by the State of California, failure to comply with local zoning regulations may subject the operator to citations issued by the City of Fremont.

8. The preschool and daycare facility shall only be permitted to operate Monday through Friday, not on weekends or holidays.
9. The applicant must ensure adequate, accessible and convenient areas for collecting and loading of materials by the garbage and recycling trucks. Vehicles parked on the site shall not be done so in any way that blocks the route of the garbage and recycling trucks.
10. Signage is not a part of this review. The applicant shall apply for a separate sign permit prior to the installation of any permanent signage on the site. All signage shall conform to the regulations contained in Article 21 of the Zoning Ordinance (Sign Regulations) and Section 11364.5 of the State of California Health and Safety Code.

Conditions to be satisfied prior to issuance of a Conditional Use Permit Certificate

11. Detailed construction plans shall be submitted for Building Permit with Site Plan and Architectural Review to ensure conformance with the conditions herein, as well as all relevant codes, policies, and other requirements of the Fremont Municipal Code and the currently adopted Building and Fire Codes.
12. The following condition shall be printed on the cover sheet or first sheet of the construction plan set submitted for building permit under the “General Notes” list:

Construction activities shall be limited to the following hours:
Monday through Friday - 7 AM to 7 PM
Saturday - 9 AM to 6 PM
Sundays and Holidays - No construction activities allowed.
13. The applicant shall apply for and obtain an encroachment permit for all new and reconstructed improvements located within the public right-of-way. The encroachment permit shall be issued concurrently with the building permit for the work to be done on site.
14. The applicant shall remove and replace any existing damaged sidewalk along the project frontage to the satisfaction of the City Engineer.
15. Precise geometry and location of all driveways shall be subject to approval by the City Engineer.
16. The applicant shall stencil all storm drain inlets with the words “No Dumping – Drains to Bay” using thermoplastic stenciling purchased from the City of Fremont Development Services Center.
17. If more than 5,000 square feet of landscaping is installed, then a separate irrigation meter will be required per California Water Code, Section 535.
18. The applicant shall submit a conceptual landscape plan in conformance with the City of Fremont’s Landscape Development Requirements and Policies.

19. Upon approval of the landscape plan the applicant shall submit landscape construction documents for the project.
20. The three existing Privet street trees shall be preserved as part of this project.
21. All fencing shall be located a minimum of four feet from the edge of adjacent pavement to allow for a landscaped buffer between the paving and the fence.
22. The applicant shall revise the site plan to provide a 5-foot wide landscape planter with 6-inch curb along the majority of the southwestern property line and to allow for screen-planting of the trash enclosure on three sides.
23. The applicant shall install a 6-inch wide concrete curb to separate the play area from the drive aisle and parking area.
24. The applicant shall submit a site electrical plan and photometric plan for review and approval. Maximum illumination levels shall not exceed 5 foot-candles and minimum illumination levels shall be .25 foot-candle.
25. The gas and electrical meters shall be enclosed in cabinets so that there are no exposed utilities in the new playground area.
26. The applicant shall meet all requirements of the currently adopted edition of the California Fire and City of Fremont Municipal Codes in effect at the time of building permit application.
27. A Fire Department access roadway having a minimum 20-foot unobstructed linear width shall be provided through the site to within 150 feet of all exterior portions of the building. This access roadway shall be designated as a Fire Lane and shall meet Fire Department standards for surface type, distance, weight loads, turn radius, grades, and vertical clearance. Where access roadways are not wide enough to accommodate both the required 20-foot unobstructed width and sufficient room for parallel parking, then the applicant shall provide red curbs, "Fire Lane – No Parking" curb lettering every 30 feet, and fire lane signs every 100 feet.
28. The applicant shall provide a site plan/civil utility plan with the location of the nearest public fire hydrants. Fire hydrant(s) shall be spaced at minimum 300 feet intervals, with the distance measured as the fire engine travels on all-weather surfaces. Public fire hydrant head assemblies shall be Clow Model 860 or equivalent. Fire Department Connections (FDCs) for all sprinkler systems must be located not more than 100 feet from a fire hydrant per N.F.P.A 14. All inlets shall have Knox brand type caps with a metal signs/address placards installed at the connection.
29. Prior to installation, plans and specifications for the underground fire service line must be submitted to the Plans and Permit Center for approval by the Fire Department and Building Department. The underground fire service requires either cathodic protection or a corrosion engineer's protection plan.
30. A separate permit is required for the underground fire service, fire sprinkler system, fire alarm systems, assembly areas and Type 1 hoods.

31. The applicant shall install an N.F.P.A. 13 fire sprinkler system complying with local amendments.
32. The applicant shall install a monitored fire alarm/sprinkler monitoring system as required. The system must comply with N.F.P.A. 72 and local ordinance #32-2007. A nationally recognized testing laboratory numbered certificate shall be provided at no cost to the City. The fire alarm system's alarms, supervisory, and trouble signals shall be distinctly and descriptively different per City of Fremont Fire Alarm Standard 25A.
33. The applicant shall have a key box (Knox brand) located outside of all buildings/gates and provide keys to the Fire Department for access. Vehicle gates shall use Knox lock or keyed over-ride switch. Gates shall also have an infrared receiver installed. Applications can be obtained at the Fire Department Administration Office located at 3300 Capitol Avenue (phone: 510-494-4200).
34. The building address shall be clearly visible and legible from the public street. Address numbers shall contrast with their background.
35. The applicant must immediately notify the Fremont Fire Department Hazardous Materials Unit of any underground pipes, tanks or structures; any suspected or actual contaminated soils; or other environmental anomalies encountered during site development activities. Any confirmed environmental liabilities will need to be remedied prior to resuming site development activities.
36. Garbage and recycling requirements are explained in the City of Fremont's *Waste Handling Guidelines* document. The applicant will be responsible for incorporating these guidelines into the project. This document can be downloaded from the City's website at the following link: www.fremont.gov/Construction/SolidWasteRegulations/default.htm
37. The proposed trash enclosure shall be equipped with a lockable gate or door.
38. If the project's building permit valuation is over \$300,000 it will be subject to the Construction Debris Recycling Ordinance. In such a case, 100% of the asphalt/concrete must be reused or recycled, and at least 50% of the remaining debris generated from the project must be reused or recycled. The applicant should review the *Builders' Guide to Reuse & Recycling* booklet to help identify potential service providers and recycling facilities. This document can be downloaded from the following link: <http://www.stopwaste.org/docs/buildersguide-05.pdf>
39. The applicant must submit a City of Fremont *Waste Handling Plan* prior to beginning any demolition or construction. The *Waste Handling Plan* must be approved by the City's Environmental Services Division before any building permits are issued.
40. During construction, the applicant may contract with any recycling company licensed to do business in Fremont for salvage or recycling of separated construction and demolition materials. Separated material destined for recycling may not contain more than 10% by weight or volume of solid waste or other non-recyclable material.

41. Plant and tree debris must not be mixed with other wastes. Plant and tree debris must be chipped on site or taken to a grinding/composting or fuel facility. It is illegal to dispose of plant and landscaping debris in an Alameda County landfill.
42. The contractor must ensure that trash (non-recyclable construction and demolition debris) is removed from the site during construction per the Fremont Municipal Code, by one or more of the following methods:
 - a. Contacting the City's franchised waste hauler, Allied Waste Services, to arrange for use of debris box containers for all municipal solid waste to be landfilled;
 - b. Removal from the premises by a construction or demolition contractor, using their own equipment and vehicles, as part of a total construction, remodeling or demolition service offered by that contractor.
43. Within thirty (30) days of completion of the work, the applicant must file a *Waste Disposal & Diversion Report* documenting actual diversion and disposal of construction and demolition debris, along with the disposal receipts or weight tags.
44. Weekly municipal solid waste collection service is required for all occupied commercial properties, and is provided by Allied Waste Services on an exclusive franchise basis.
45. Recyclable materials collection is required for all occupied commercial properties and operates in a competitive environment open to any vendor authorized to do business in the City of Fremont.

END OF CONDITIONS



PLANNING COMMISSION STAFF REPORT JUNE 25, 2009

Project:	WANG RESIDENCE 2ND - STORY ADDITION (PLN2009-00225)
Proposal:	Planning Director referral of a Finding for Site Plan and Architectural Approval of a 1,247 square foot second-story addition to an existing single-story home.
Recommendation:	Approve based on findings and subject to conditions.
Location:	94 Madrid Place in the Mission San Jose Planning Area APN: 525-0311-132-00 (See aerial photo on next page)
Lot Size:	7,373 square feet (0.17 acres)
Building Size:	Existing: 1,881 square feet; Proposed: 3,128 square feet
People:	Mr. and Mrs. Yashan and Yi Wang, Applicants/Property Owners Jeremy Deng, InSpace Design Studio, Architect Steve Kowalski, Staff Planner, (510) 494-4532; skowalski@fremont.gov
Environmental Review:	This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15301 (Addition to an Existing Structure).
General Plan:	Low Density Residential 2-3½ Dwelling Units per Acre
Zoning:	Planned District P-73-1

EXECUTIVE SUMMARY:

The applicant is proposing to construct a 1,247 square foot second-story addition onto an existing 1,881 square foot single-story home. The property is located in the Kimber Planned District (P-73-1), and the regulations governing parcels in this particular Planned District (or PD for short) require Site Plan and Architectural Approval for all additions, as well as neighborhood notification to all property owners within 300 feet of the project site. During the notification process for the proposed addition the neighbors to the rear of the project site informed staff that they oppose the addition for a number of reasons (see ***Neighborhood Notification*** section below). In accordance with Section 8-23003 of the Zoning Ordinance, in such cases the Planning Director may elect to refer the matter to the Planning Commission as a Finding for Site Plan and Architectural Approval. Because the project complies with all applicable standards of the Kimber PD and the citywide Planning Policies and Regulations Relating to Second-Story Additions, staff recommends the Planning Commission approve the proposed addition based on the findings and subject to the conditions contained in Exhibit "B", attached.

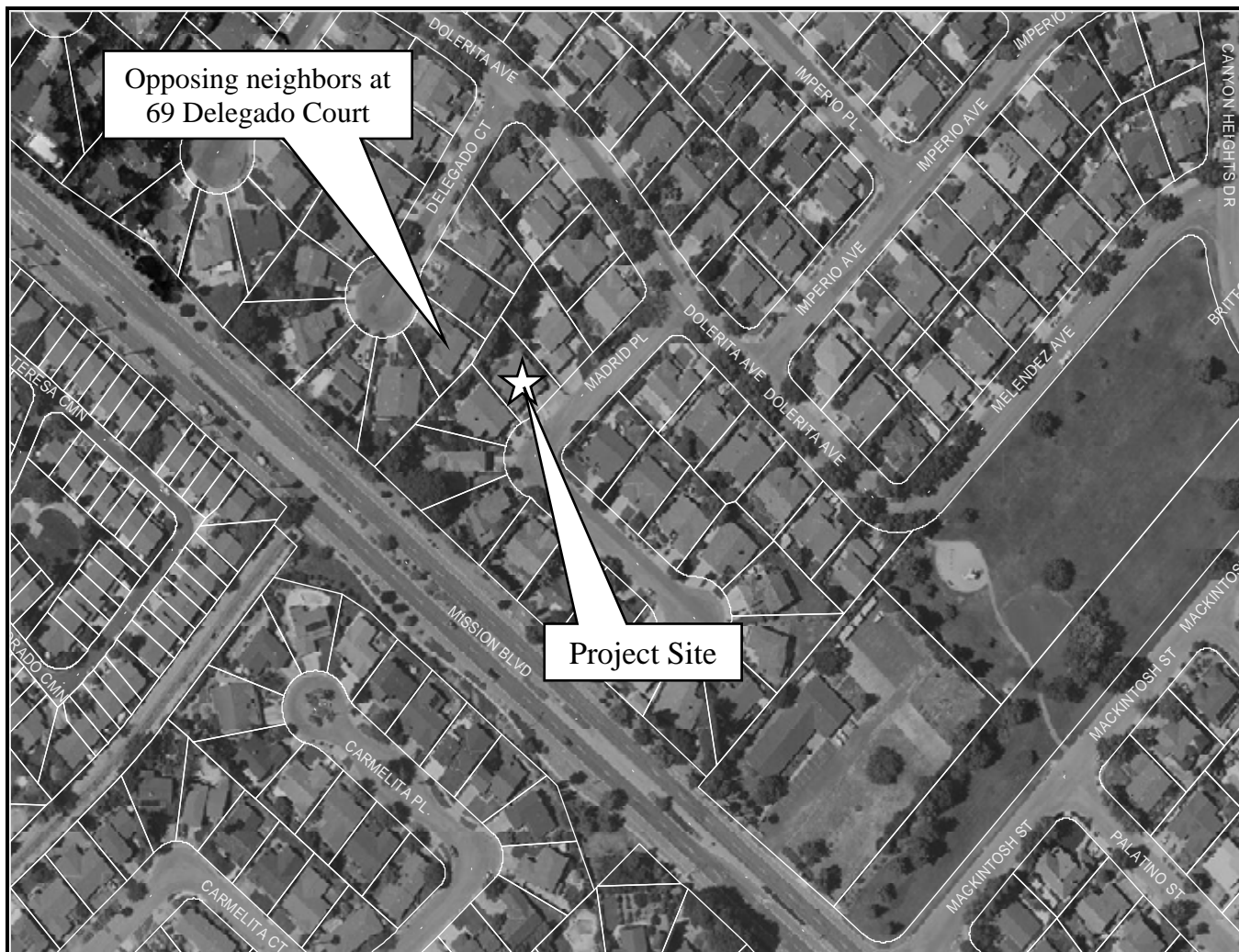


Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES: North: Single-family residential (Planned District P-73-1)
 South: Single-family residential (P-73-1)
 East: Single-family residential (P-73-1)
 West: Single-family residential (P-73-1)

BACKGROUND AND PREVIOUS ACTIONS:

On September 11, 1973, the City Council approved Planned District P-73-1 (also known as the Kimber PD) allowing the development of a new residential neighborhood consisting of a mix of more than 300 one-story and two-story detached single-family homes east of Mission Boulevard opposite Las Palmas Avenue. On May 13, 2004, through PD Minor Amendment P-73-1G, the Kimber PD regulations were amended to require neighborhood notification of all properties within 300 feet for any additions to existing homes within the PD, and approval authority was delegated to the Planning Director.

On May 4, 2009 the applicants applied for Building Permit with Site Plan and Architectural Approval for a second-story addition to their home. In accordance with the requirements of PD Minor Amendment P-73-1G, staff notified the property owners within 300 feet of the project site and received letters of opposition from two neighbors, the homeowners at 96 Madrid Place and the homeowners at 69 Delegado Court. Since that time, the applicants have succeeded in addressing the concerns of the owners of 96 Madrid Place. However, the neighbors at 69 Delegado Court still oppose the addition. For this reason, the Planning Director has elected to refer the matter to the Planning Commission.

PROJECT DESCRIPTION:

The applicants are proposing to build a 1,247 second-story addition onto their home at 94 Madrid Place. The existing single-story home currently contains 1,881 square feet of living area and a 416 square foot two-car garage. The current floor plan features 3 bedrooms and 2 bathrooms, as well as a living room, family room, formal dining room and kitchen. The proposed addition would add two new bedrooms, two new bathrooms, and an office on the second floor, with one of the existing first-floor bedrooms being converted to a new spiral staircase, thus bringing the new total number of bedrooms to four (4).

The existing wood shingle siding on the façade of the home will be removed and replaced with a combination of stucco and additional stone veneer siding to match the existing stone veneer accents around the chimney. The sides and rear of the addition will be finished with stucco siding to match the existing first floor. The new windows used in the addition will be compatible with and proportionate in size to the existing windows in the house and be finished with decorative wood trim framing. The roofing materials will consist of composition shingle to match the existing roofing on the house.

PROJECT ANALYSIS:

General Plan Conformance Analysis

The General Plan land use designation for the site is Low Density Residential 2-3½ Dwelling Units per Acre. This land use designation is intended to provide for traditional detached single-family residential development on individually owned lots. The Planned District and the design and configuration of its individual parcels were found to be in conformance with the General Plan when it was originally approved by the City Council, and the minor nature of the proposed changes being made to the subject property would not bring it out of compliance with the PD. Staff also believes that the proposed addition is consistent with the following goals and policies of the Land Use and Housing Elements of the General Plan:

- **Housing Goal H-2** - *High-quality and well-designed new housing of all types throughout the city.*
- **Land Use Policy 1.18** - *Single-family detached homes shall be proportional to their lots.*
- **Land Use Policy 1.12** - *Buildings shall be designed to provide for maximum feasible visual and auditory privacy for each unit through the use of site design, open space, landscaping and appropriate building materials.*

Analysis

The proposed addition complies with all of the minimum development standards of the Kimber PD (see **Zoning Compliance Analysis** section below for further discussion). The applicant has also redesigned various aspects of the addition at the request of staff and the next-door neighbors at 96 Madrid Place in order to cut down on the massing of the structure and to reduce privacy impacts on the neighbors. The proposal is well under the maximum parameters allowed for two-story additions, including the maximum building height of 30 feet (the proposed height is 27' 9"), the maximum Floor Area Ratio of 70% (the proposed Floor Area Ratio is only 55%), and the maximum second-story to first story ratio of 75% (the proposed ratio is only 66%). As such, staff believes the proposal is of a high quality and proportional to its lot.

While any new second-story addition will have a direct and unavoidable impact on the immediate neighbors, the applicants in this case were willing to address the concerns of one of the two neighbors who initially opposed the project by reducing or eliminating some of the second floor windows facing that neighbors' property. The applicants also met with the other neighbors to the rear who oppose the project, but were unable to address their concerns. The Kimber PD Guidelines do allow second-story additions to single-story homes subject to specific height and setback limits, and the proposal complies with each of these regulations as discussed below. For these reasons, staff finds that the proposal is consistent with the goals and policies of the General Plan.

Zoning Compliance Analysis

The project site is located within the Kimber Planned District (P-73-1). In accordance with Section 8-21815 of the Zoning Ordinance, Site Plan and Architectural Approval is required for any minor additions to existing developments within a Planned District. In addition, pursuant to Planned District Minor Amendment P-73-1G, neighborhood notification and Planning Director approval is required for all additions to existing homes within the Kimber PD. Prior to this amendment, all additions required Planning Commission review and approval.

Staff received letters of opposition from two neighbors during the neighborhood notification process for the proposed addition. The applicants have since been able to make minor changes to the project to address the concerns of one of the two neighbors. However, the second neighbor continues to oppose the project. Per Section 8-22522(b) of the Zoning Ordinance, in order to make a Finding for Site Plan and Architectural Approval the decision-making body must find that:

- (1) The proposed use is similar to other permitted or conditionally permitted uses on the basis that it has similar characteristics to those uses; and
- (2) That any proposed increases or decreases in established standards would not have an adverse impact on the site, surrounding properties, or the general welfare of the public;

Discussion:

- (1) The Kimber PD was initially established to feature a mix of single- and two-story dwelling units, and it has always allowed second-story additions to those homes that were originally built as single-story units. Many of the original homes were built as two-story units, and a number of single-story homes have had second stories added onto them over the years. The proposed addition is similar to other two-story homes in the Kimber neighborhood in that it conforms to the same standards and requirements governing all two-story homes in the PD, as well as the City's Planning Policies and Regulations Relating to Second-Story Additions governing all new second-story additions citywide.
- (2) The established standards governing the Kimber PD are typical of those governing single-family residential zones containing lots of 6,000-10,000 square feet, providing for ample front, rear and side yard setbacks, and a building height limit capable of accommodating a standard two-story home. The addition as proposed would not require any variances or exceptions from the standards of the Kimber PD. The following table shows how the proposal complies with these standards:

Lot Standard	Required by PD	Proposed	Degree of Conformity
Front setback	20-25 feet	23 feet at closest point	Exceeds by 3'
Rear setback	25 feet	26'8" at closest point	Exceeds by 1'8"
Side setbacks	15 feet total (5 feet and 10 feet)	5'7" left side and 10 feet right side	Exceeds by 7" on left and conforms on right
Building Height	30 feet	27'9"	Under by 2'3"
On-site Parking	2 garage spaces	2 garage spaces	Conforms

As can be seen from this table, the proposal either meets or exceeds the minimum requirements for a new second-story addition in the Kimber PD. In addition, at staff's request the applicant made design changes to the initial proposal in order to cut down the massing and shadowing effect of the second story by replacing gable rooflines with hips and lowering the overall height of the building. Furthermore, the addition does not span the entire width of the house, and it features setbacks on the front and side elevations to help further reduce the overall mass of the structure and its shadowing effect on the adjacent properties.

The opposing neighbors' property abuts the subject site to the rear along a span of approximately 35 feet. There are a number of mature trees located along the shared property line which provide screening between the two properties and the homes are separated by approximately 48 total feet of open space, slightly less than the standard amount of separation between two single-family lots each having a 25-foot backyard (see Informational Item #2 for a close-up look at the existing separation between the adjacent homes).

Based on staff's analysis of the application, the findings prescribed by Section 8-22522(b) of the Municipal Code can be made in support of the proposed addition. As such, staff recommends that the Planning Commission approve the project based on the findings and subject to the conditions contained in Exhibit "B".

Neighborhood Opposition:

The regulations governing the properties within the Kimber PD require neighborhood notification to all property owners within 300 feet for any additions to existing homes. In this case, after notification, staff received letters from two neighbors, the neighbors directly next-door to the right (east) of the subject property at 96 Madrid Place, and one of the two neighbors backing up to the property from the rear (north) at 69 Delegado Court. The neighbors to the east were primarily concerned with impacts to their privacy and shadowing from the new second story. The applicant worked with these neighbors to eliminate and/or reduce the size of some of the proposed windows on the right side of the addition to minimize the impact on the neighbors' privacy, and the neighbors have since indicated that they are satisfied with the changes and no longer opposed to the project.

The neighbors to the rear are concerned about the potential for loss of sunlight, views and privacy that they believe will result from the construction of the addition (see Informational Item #1). Their house is set back deep within the lot resulting in their having a slightly shallower rear yard on their property than the average single-family lot, so they are concerned that they will lose privacy and sunlight and that sounds from activities within the new addition will carry over the property line into their backyard and living room. The applicants met with these neighbors in an attempt to address their concerns, but the two parties could not come to a resolution.

Environmental Review:

This project qualifies as a Class 1 categorical exemption pursuant to Guideline 15301 of the California Environmental Quality Act (Addition to an Existing Structure).

PUBLIC NOTICE AND COMMENT:

Public hearing notification is required for the entitlement being sought. A total of 50 notices were mailed to the owners and occupants of all properties located within 300 feet of the project site on Wednesday, June 10, 2009. A Public Hearing Notice was also published in *The Tri-City Voice* on this same date.

ENCLOSURES:

Exhibits:

Exhibit "A"	Project Plans (Site Plan, Elevations, and Floor Plan)
Exhibit "B"	Recommended Findings and Conditions of Approval

Informational Items:

Informational 1	Letter of Opposition from Neighbor at 69 Delegado Court
Informational 2	Aerial Photo of Existing Conditions

RECOMMENDATION:

1. Hold public hearing;
2. Find that the project is exempt from the California Environmental Quality Act (CEQA) per CEQA Guideline 15301 which exempts projects involving a minor addition to an existing building that complies with the current zoning and General Plan land use designation of the site;
3. Find that PLN2009-00225 is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the Land Use and Housing Elements of the General Plan, as enumerated within the staff report; and
4. Approve PLN2009-00225 as shown in Exhibit "A" based on the findings and subject to the conditions contained in Exhibit "B".

Existing Zoning

Shaded Area represents the Project Site



Existing General Plan



Exhibit "B"
Findings and Conditions of Approval
PLN2009-00225 – Wang Residence 2nd-Story Addition
94 Madrid Place

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated June 25, 2009, incorporated hereby:

Findings for Site Plan and Architectural Approval:

- a. The proposed addition is similar to other two-story homes in the Kimber Planned District in that it conforms to the same standards and requirements governing all other two-story homes in the Planned District, as well as the City of Fremont's Planning Policies and Regulations Relating to Second-Story Additions governing all new second-story additions citywide; and
- b. The proposed addition will not have an adverse impact on the site, surrounding properties or the general welfare of the public in that the applicant is not requesting or proposing any increases or decreases in the established standards governing the Planned District or the citywide Planning Policies and Regulations Relating to Second-Story Additions.

CONDITIONS OF APPROVAL:

1. The final plans for a proposed second-story addition shall conform to Exhibit "A" (Project Plans) and all previous conditions of approval of Planned District P-73-1, except as amended herein.
2. Complete construction drawings must be submitted to the Plans & Permits (Building) Division to ensure conformance with applicable codes, policies, and other requirements of the Fremont Municipal Code and California Building and Fire Codes.
3. Minor changes made be Minor modifications to this conditional use permit may be made subject to review and approval by the Planning Director if such modifications are in keeping with the intent of the original approval. However, the Planning Director may refer any modification to the Planning Commission if he/she feels the request is of such a nature that it warrants consideration by the Commission.
4. The following condition shall be printed on the cover sheet or first sheet of the construction drawing plan set submitted for building permit under the "General Notes" list:

Construction activities shall be limited to the following hours:
Monday through Friday - 7 AM to 7 PM
Saturday - 9 AM to 6 PM
Sundays and Holidays - No construction activities allowed.

END OF CONDITIONS

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PLANNING COMMISSION STAFF REPORT JUNE 25, 2009

Project:	CRYOSPEC INC. CUP- (PLN2009-00229)
Proposal:	To consider a Conditional Use Permit to allow the storage of inert cryogenic liquids, along with limited amounts of flammable and oxidizing gases, within a new enclosure for an existing facility.
Recommendation:	Approve, based on findings and subject to conditions.
Location:	41446 Christy Street in the Industrial Planning Area. APN 531-0222-046-00 (See aerial photo next page)
Area:	29,000 square foot tenant space within an existing 64,140 square foot multi-tenant building on a 3.79-acre lot.
People:	Douglas F. Wells, President, CEO, Cryospec Inc., Applicant Northern California Industrial Portfolio, Inc., Owner Clifford Nguyen, Staff Planner (510) 494-4769; cnguyen@fremont.gov
Environmental Review:	This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15311, Accessory Structures.
General Plan:	General Industrial
Zoning:	G-I, General Industrial

EXECUTIVE SUMMARY:

The applicant, Cryospec Inc., requests approval of a Conditional Use Permit (CUP) to allow them to store and distribute regulated quantities of inert cryogenic liquids (non-reactive liquids, low risk to public health), along with limited amounts of other flammable and oxidizing gases at an existing building and within a new equipment enclosure on Christy Street in the general industrial district. No manufacturing of chemicals (e.g., processing or mixing of chemicals) would occur at the proposed site and the use would not result in the generation of hazardous waste. The applicant is a provider of atmospheric gases, specialty gases, and associated equipment for several local technology companies that include Amgen, Thermo Fisher Scientific, and Solyndra. Presently on Fulton Place, the applicant has experienced significant growth since establishing its business ten years ago in Fremont. Plans to continue to expand its business in Fremont can be facilitated with the approval of a CUP for a much larger facility on Christy Street. Other than interior tenant improvements for fire and building safety, the Christy Street relocation would involve some minimal site improvements to include a new equipment enclosure to screen ground-level equipment and partially the bulk tanks. Staff recommends approval of the project as proposed, based on findings and subject to conditions presented in this report.

Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES: North, South, East, and West: Industrial Uses

BACKGROUND AND PREVIOUS ACTIONS:

In 1987, the existing 60,140 square foot industrial building was completed. The applicant proposes to occupy 29,000 square feet of the industrial building. According to City records, except for a lot line adjustment approved at the time the building was constructed and numerous tenant improvements during the history of the building's use, there are no other known approvals or restrictions that would have an affect the CUP application presently requested.

PROJECT DESCRIPTION:

A Conditional Use Permit to allow the storage of inert cryogenic liquids, along with limited amounts of flammable and oxidizing gases, within a new enclosure for an existing facility. The applicant's operation statement is enclosed (Informational 1). Hours of operation are Monday through Friday, from 8 a.m. to 5 p.m.

PROJECT ANALYSIS:

General Plan Conformance:

The existing General Plan land use designation for the project site is General Industrial. The proposed project is consistent with the existing General Plan land use designation for the project site because the purpose of the general industrial district is to provide areas for general industrial, manufacturing, wholesale and other related services needed by the City and the region. The proposed use and services offered by Cryospec Inc. are needed by several industries, locally and regionally. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

- **Land Use Goal 3: Sufficient industrial land to provide a diversified industrial base to meet the employment needs of the City's present and future workforce.**
- **Health & Safety Goal HS 7: Minimize feasible risk to lives and property due to the use and storage of hazardous materials.**

Analysis: The City's Industrial Planning Area where the project site is located is characterized in the General Plan as a four thousand acre area, extending from Warm Springs Boulevard to Interstate 880 and west to the Bay Lands Planning Area. This area is separated from residential uses which are generally incompatible with the noise, odors, traffic, and impacts of industrial uses. The City is committed to the long term viability of this area.

The proposed use is compatible with the industrial Planning Area, its general plan land use designation of General Industrial, and its surrounding uses. The General Industrial land use designation is the broadest industrial category allowing all types of industrial uses, particularly for those uses that have the most significant environmental impacts, nuisance or hazardous characteristics. All uses adjacent to the facility are general industrial-related

uses and have varying degrees of hazardous materials stored or used on site. According to City records, there are no sensitive receptors within 1,200 feet of the project site (nearest residential use over 1,200 feet away on east side of Interstate 880). Approval of a CUP to facilitate an expansion of a Fremont-based company would preserve and likely increase the employment within the City.

To operate this facility, the applicant is required to submit a hazardous material business plan (HMBP—Informational 2). Regulated by the City, County, State and Federal agencies, the HMBP ensures proper management, handling and storage of hazardous materials to prevent and minimize the threat they pose to the community. A draft of the HMBP has been reviewed by the City's Fire Department. Final approval of the HMBP is required prior to building occupancy.

Zoning Regulations: The project is governed by provisions adopted in the Zoning Ordinance for the General Industrial district. In addition to listing uses that are permissible for the district, there are several governing provisions related to design and use compatibility. Among the list are special provisions pursuant to Section 8-22143.3 [High intensity hazardous materials uses.] that specifically address the type and quantity of hazardous materials used within a facility. These special provisions were initially adopted in October 2003, with subsequent amendments for clarification and update. The intent of these special provisions is to better protect the public safety, health and welfare. Application of these special provisions is highlighted by the following actions:

- Review and approval of project through a discretionary review process (administrative or Planning Commission level).
- Projects are subject to site development review and Fire Department recommendations are specifically considered.
- Special conditions applied to approval of a land use permit.

As the proposed industrial use is permitted, at issue for this proposed project is the Planning Commission's discretionary authority to allow the amount of storage and distribution of inert cryogenic liquids (non-reactive liquids), along with limited amounts of flammable and oxidizing gases. More specifically, the applicant intends to store, fill and distribute a full line of cylinder gases for industrial, medical, and specialty gas applications, as well as to sell and service related equipment. In the current situation, a 6,000 gallon liquid nitrogen bulk tank and 1,500 gallon liquid argon bulk tank are proposed to be relocated from their current site to the new Christy Street site within a newly constructed enclosure. Both liquids are classified "Group C", which are hazardous materials that pose the least risk to public health, safety, or property. These two liquids are also inert and non-flammable. The enclosure is designed to accommodate future expansion and the possible addition of two more non-flammable bulk tanks and storage of lesser amounts of flammable gases (e.g., hydrogen, acetylene). The balance of chemicals and gases are largely stored in cylinders and secured within the building on the site. These cylinders are then transported by Department of Transportation (DOT) approved distribution vehicles to the end user for industrial, pharmaceutical, or medical application. All chemicals stored on the site are included in a hazardous materials inventory statement (HMIS—Informational 3).

The Fire Department and Building Division assisted staff on review of the proposed project and anticipated maximum quantities of regulated chemicals proposed for the site. A part of the review, the following were considered:

- project and site surrounding compatibility
- hazardous materials business plan
- hazardous materials inventory statement
- materials safety data sheet for each of the hazardous materials
- type of equipment which uses or contains hazardous materials
- building and construction rating
- mitigation measures to reduce potential associated risks posed

To ensure compliance and compatibility, conditions are recommended. The conditions largely comprise of operational conditions; however, some conditions are included to ensure design compatibility (e.g., screening of mechanical equipment). Staff is supportive of the proposed project and recommends findings and conditions for approval included in Exhibit "B."

Parking: Construction of the proposed equipment enclosure would not displace any existing parking on the site. A truck loading dock would be modified (and eliminated) to accommodate the new equipment enclosure. As such, parking is not at issue with this proposed project.

Design Analysis:

Site Planning/Architecture: The applicant intends to occupy a 29,000 square foot tenant space within the existing 60,140 square foot building. In addition to interior tenant improvements, one new equipment enclosure adjacent to the building is proposed. The new equipment enclosure is proposed along the north side of the building at the location of an existing loading dock that will be removed. For the new enclosure, an eight-foot louvered panel screen system is proposed to screen a majority of the ground level equipment. Finally, the new enclosure is proposed to be color-treated a tan/beige identical to the existing building.

Staff is supportive of the proposed eight-foot high screening enclosure, as it is not practical to entirely screen the liquid nitrogen and argon tanks. The two tanks are 30 feet and 15 feet in height, respectively. Due to sheer size and height, requiring a screening device of at least 30 feet in height at width of the tanks could result in a more dramatic visual impact from Christy Street than allowing portions of the tanks themselves be exposed. These tanks are proposed to be aligned in tandem reducing perceived massing, and the visual line of sight from Christy Street is somewhat broken up by mature trees on the site and the adjacent industrial lot. Color treating of the tanks are also not practical, as they are liquid cryogenic chemicals (meaning chemicals stored at extremely low temperatures), hence the appearance of white tanks to reflect the sun's heat.

Circulation: The proposed project site has direct access from Christy Street, an industrial collector street. The closest arterials are Stevenson Boulevard to the north and Auto Mall Parkway to the south. Street improvements are not at issue with this proposed project.

Grading & Drainage:

Any grading and drainage modification needed for the proposed construction of the new equipment enclosure is expected to be minimal. These modifications, if any, would be reviewed as part of the building permit review process.

Environmental Review: This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15311, Accessory Structures.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 53 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on June 12, 2009. A Public Hearing Notice was published by *The Tri-City Voice* on June 10, 2009.

ENCLOSURES:

Exhibits:

- Exhibit "A" [Site Plan and Architectural Elevations](#)
- Exhibit "B" [Findings and Conditions of Approval](#)

Informational Items:

1. [June 2009 Cryospec Inc. Operation Statement](#)

Supplemental Hearing Materials:

2. Color and Material Board

RECOMMENDATION:

1. Hold public hearing.
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under Guideline 15311, Accessory Structures, in that the improvement proposed are limited to the construction of a single equipment enclosure.
3. Find the proposed project is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use and Health & Safety Chapters as enumerated within the staff report.
4. Approve the project as proposed as shown on Exhibit "A", subject to findings and conditions in Exhibit "B."

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan

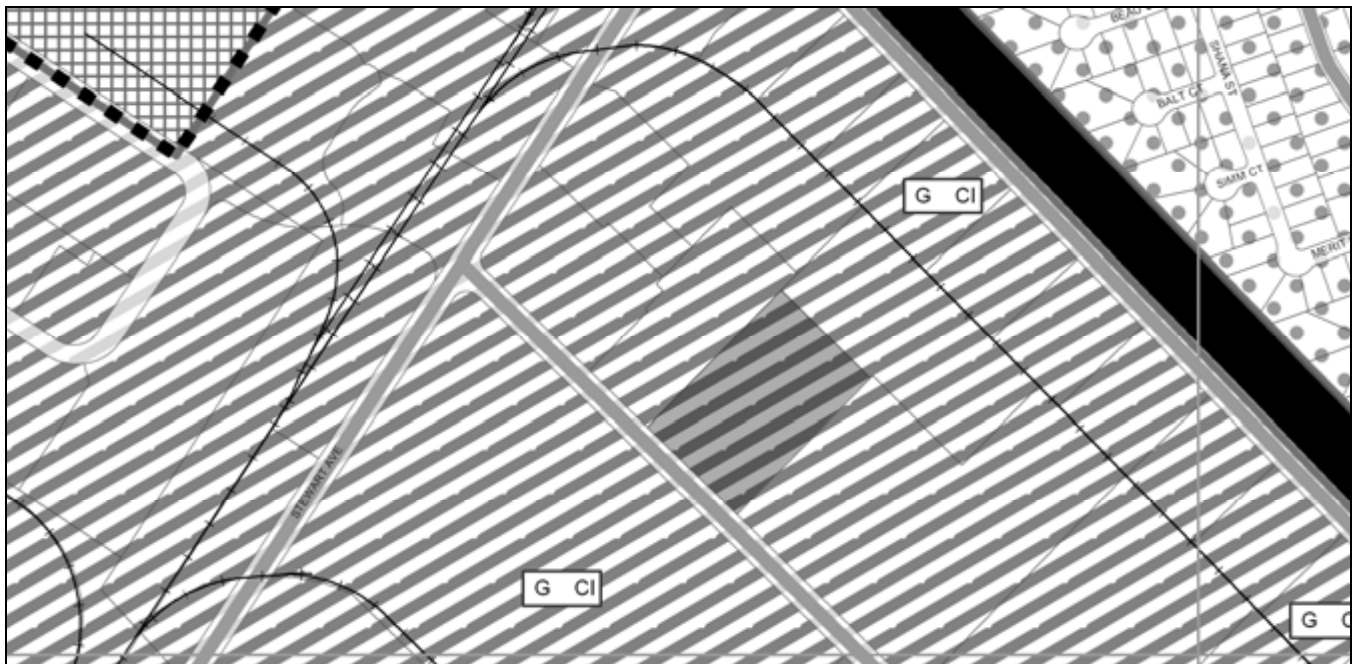


EXHIBIT “B”
Findings and Conditions of Approval
For PLN2009-00229, Cryospec Inc. Conditional Use Permit
41446 Christy Street (29,000 s.f. tenant space), APN 531-0222-046-00

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated June 25, 2009, incorporated hereby.

Conditional Use Permit Findings:

- a. The proposed use is consistent with the General Plan because the proposed industrial use to store, fill and distribute a full line of cylinder gases for industrial, medical, and specialty gas applications, as well as to sell and service industrial-related equipment, is permitted in the General Industrial District. Due to the amount of hazardous materials proposed for the site, approval of a Conditional Use Permit is required as requested herein.
- b. The site is suitable and adequate for the proposed use because in addition to interior tenant improvements needed to accommodate the use, only one new equipment enclosure is proposed to screen and secure equipment stored outside. Construction of the new equipment enclosure would not displace any existing off-street parking used by the industrial tenants;
- c. The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services because there neither on- or off-site improvements needed to the existing circulation system nor would the proposed project and its minor improvements cause impacts or impede the current vehicular or pedestrian circulation system. The site's frontage is fully improved, and proposed use would not result in an increase in traffic volumes or trips that otherwise would be experienced by a typical industrial use.
- d. The proposed use would no have a substantial adverse economic effect on nearby uses because the applicant will not be introducing a new industry on the site that could be in direct competition to or adversely impact other businesses in the area. The applicant is relocating its current business in Fremont on Fulton Street to this larger facility at the subject site on Christy Street.
- e. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large because the applicant is required to comply with special conditions imposed by approval of this Conditional Use Permit, including all applicable building and fire codes.
- f. The design of the project is compatible with existing and proposed development in the district and its surroundings because and the proposed equipment enclosure is color-treated and designed to be compatible with the existing character of the building.

- g. The project will comply with the provisions of article 27 of this chapter (Site Plan and Architectural Approval) in that the applicant is required to submit plans to the City's Community Development Department for architectural and building permit review and approval as conditioned by this Conditional Use Permit.

CONDITIONS OF APPROVAL:

General Conditions

1. The project shall substantially conform to Exhibit "A" (Development Plans), except as modified by conditions herein.
2. The applicant shall meet all requirements of the currently adopted edition of the California Building, Fire, and City of Fremont Municipal Codes and local ordinances in effect at the time of building permit issuance.
3. The applicant shall develop and maintain a hazardous materials business plan (HMBP) pursuant to Chapter 6.95 of California's Health and Safety Code and Title 19, section 2620-2732, of California's Code of Regulations (CCR). The HMBP shall also be submitted to the Fremont Fire Department for review and approval prior to moving hazardous materials onto the site.

Special Condition

4. The maximum quantity of non-flammable, flammable and oxidizing hazardous materials that may be present on-site is limited to those specified in the applicant's May 2009 "draft" Hazardous Materials Inventory Statement. A copy will be kept in the permanent file for Conditional Use Permit PLN2009-00229.

Prior to Issuance of Building Permits (Plan Details and/or Modifications Required)

5. The applicant shall submit plans to the City's Community Development Department for building permit/site plan and architectural approval. The plans and information provided shall demonstrate compliance with the only condition imposed herein.

Requirements to be Completed Prior to Request for Final Inspection

6. Final occupancy shall not be granted, including transporting to or storing of the proposed hazardous materials on the site until all required improvements are completed and accepted by the City's Planning and Building Divisions and Fire Department.

Ongoing Operational Requirements

7. *Minor Increase of Hazardous Materials.* If the applicant or the then operator proposes an increase in the maximum quantity of non-flammable, flammable and oxidizing hazardous materials for the site, a formal written request must be to the City Planning Director and Fire Marshal. The Fire Marshal shall review the request and make a recommendation to the Planning Director on whether to permit an increase in the quantity of hazardous material proposed. If the

Planning Director determines that the increased quantities will not cause a considerable increase in the risk to the health and safety of the community, the Planning Director may permit such increase. No amendment to the Conditional Use Permit or formal hearing shall be required.

8. *Major Increase of Hazardous Materials.* Notwithstanding the allowance as prescribed in Condition 7 above, if the Planning Director determines that an increase in the maximum quantity of hazardous materials for the site will cause a considerable increase in the risk to the health and safety of the community (e.g., requiring mandatory building improvements for seismic upgrades, high intensity hazardous materials requiring engineering or administrative controls, etc.), an amendment to the Conditional Use Permit approved by the Planning Commission in a public hearing shall be required.
9. *City's Right to Referral of Project to Planning Commission for Modification:* If the Planning Director finds evidence that Conditions of Approval have not been fulfilled or uses in operation at the site have resulted in a substantial adverse effect on the health, and/or general welfare of uses of adjacent or proximate property, or have a substantial adverse impact on the public facilities or service, the Director may refer this approval to the Planning Commission for review. If, upon such review, the Commission finds that any of the results stated above have occurred, the Commission may modify this approval or revoke it.
10. *Indemnification.* The operator and property owner of the site shall defend, indemnify, and hold harmless the city or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the city, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The city shall promptly notify the provider(s) of any such claim, action or proceeding. The city shall have the option of coordinating the defense. Nothing contained in this condition shall prohibit the city from participating in a defense of any claim, action, or proceeding if the city bears its own attorney's fees and costs, and the city defends the action in good faith.

END OF CONDITIONS



PLANNING COMMISSION STAFF REPORT JUNE 25, 2009

Project:	TOWN FAIRE ONE PROPERTY ACQUISITION (PLN2009-00243)
Proposal:	To consider a General Plan conformity finding, pursuant to Government Code Section 65402(c), for the City's potential acquisition of a 1.59 acre parcel with a an existing commercial building. The finding also includes future uses of the site which in addition to the current Central Business District uses, includes potential recreational uses and a civic park.
Recommendation:	Find the property acquisition conforms to the City's General Plan.
Location:	39102 State Street in the Central Planning Area. APN 501-1130-007-01 (See aerial photo next page)
Area:	1.59 acres
People:	Darren Fields, Economic Development Director, Applicant Fremont Real Estate Partners II, LLC, Owner Terry Wong, Staff Planner (510) 494-4456; twong@fremont.gov
Environmental Review:	The General Plan conformity finding is not a project as defined by CEQA. Future transfer of property and continued use of the property will be exempt from CEQA review per Section 15061(b)(3) because the project has no potential for causing a significant effect on the environment.
General Plan:	Existing: Central Business District
Zoning:	Existing: Central Business District, (C-B-D)

EXECUTIVE SUMMARY:

The proposed Planning Commission action consists of a General Plan conformity finding for a potential City acquisition of a 1.59 acre parcel with a 22,000 square foot commercial building including 120 parking spaces, to allow continued Central Business District uses and future recreational uses including a civic park. The City is considering, but has not made a commitment, to acquire the subject property. Government Code Section 65402(c) requires that prior to acquiring or selling real property for any purpose, the planning agency of any city or county with an adopted General Plan must report that the acquisition or sale conforms to the General Plan. As described in this staff report, the proposed project conforms to the Fremont General Plan. Staff recommends the Planning Commission find that the General Plan conformity finding conforms with the General Plan.



Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES:

- North: Commercial Businesses
- South: Vacant Commercial
- East: Commercial Businesses
- West: Commercial and Residential Uses

BACKGROUND AND PREVIOUS ACTIONS:

In its current use and conformation as a commercial building, the subject property could meet short-term City needs for administration offices, recreation events, and human services activities related to the adjacent Family Resource Center.

For the longer term, the subject property will help the City meet the goals of the Central Business District Concept Plan adopted in 2001 which are to guide development in the area in order to create a pedestrian-friendly heart to the City of Fremont. To implement its goals, the Plan makes several key recommendations including dividing the Central Business District into distinct sub-districts and establishing a “focus area” to become the Main Street pedestrian-oriented core. As outlined in the Concept Plan, Capital Avenue is envisioned to become the center of the focus area. The Property discussed herein is located in the heart of this focus area and the future Midtown District development (along Capitol Avenue). In addition, as discussed at the March 24, 2009 City Council meeting, this specific Property could be the location of a large civic plaza framed by City facilities and a potential performing arts theatre.

PROPERTY DESCRIPTION:

The 1.59-acre Property (see Exhibit A) is commonly referred to as Town Fair One and is located at 39102 State Street, on the southeast quadrant of Capitol Avenue and State Street. The property contains a 22,000 square foot single-story commercial building with 120 parking spaces, constructed in 1973. A variety of retail, service and office uses are located within the building including medical/dental offices, insurance, accounting, real estate, travel agency, tutoring, beauty salon, restaurant, and liquor store. The property is strategically located immediately adjacent to other City-owned property along the south side of Capital Avenue (the Family Resource Center) and across the street from vacant City-owned property (the former future City Hall site). (See attached Informational item 1).

PROJECT ANALYSIS:

General Plan Conformance:

As described, Government Code Section 65402(c) requires that prior to acquiring or selling real property for any purpose, the planning agency of any city or county with an adopted General Plan must report that the acquisition or sale conforms to their General Plan. The following text describes General Plan policies applicable to the project, of which the project is consistent with.

The existing General Plan land use designation for the project site is Central Business District. The existing uses and possible future recreational uses including a civic park are consistent with the existing General Plan land use designation for the project site because they would all contribute to the vitality of the Central Business District. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

Land Use Policy 2.4: It is the intent of the City to have a vibrant Central Business District which is the focal point for the City. Allowed uses include: Offices,

retail, services, medical, entertainment and cultural facilities, eating and drinking establishments, and mixed use.

Analysis: The Central Business District is located within the core area of the City with an array of uses that promote vitality. The existing commercial uses on the site will continue, with other potential C-B-D uses locating onto the site in the future.

Policy LU 2.7: Site design and building development in the Central Business District shall be oriented toward pedestrians and transit. To maintain an active pedestrian environment, buildings oriented towards the street, sidewalks or public plazas shall be strongly encouraged. Retail uses shall be encouraged at the ground level. Building orientation, setbacks, parking locations and building design shall be evaluated for how each element encourages continuity between developments.

Analysis: The subject site is located in the heart of the Central Business District. Because of the close proximity of the site, nearby residents and people shopping could walk to the site to enjoy the future civic park/recreation facility, as they do for the existing commercial uses.

Policy LU 2.9: Public open spaces and plazas shall be strongly encouraged throughout the C-B-D. Such areas should be visible and accessible from public walkways and be appropriately landscaped as part of the proposed C-B-D design and development plan.

Analysis: The subject site is strategically located for use as a future civic park/recreation uses, as the site has good visibility and accessibility because of its frontages onto Capitol Avenue and State Street. The possible future civic park/recreation uses would conform to the City's Central Business District Concept Plan.

Parks and Recreation Policies:

Policy 1.1.1: Parks and recreation facilities shall be consistent with the standards and guidelines of the Parks and Recreation Chapter of the General Plan.

Analysis: The project site would be categorized as a "civic park". Civic Park Standards and Guidelines, identifies the primary purpose of civic parks as providing gathering places within specific areas of the City's Central Business District Focus Area where people could meet, socialize, and relax, with a secondary purpose to provide an appropriate location where civic events and local celebrations could take place, such as outdoor concerts, fairs, and festivals.

Civic parks are to be established along with key projects in the City's Central Business District Focus Area. The project site is located immediately adjacent to other City-owned property along the south side of Capital Avenue (the Family Resource Center) and across the street from vacant City-owned property (the former future City Hall site), all within the CBD. The site is consistent with the standards and guidelines for civic parks.

Policy 2.1.2: Acquire and develop new park lands and recreation facilities consistent with the Parks and Recreation Master Plan.

Analysis: The City's acquisition of the subject parcel for a future civic park helps the City continue to achieve its standard of five acres of park land per 1,000 new residents. This standard is the basis on which the City collects development impact fees for the park system. At 1.59 acres, the site is significantly larger than the one-quarter acre minimum size requirement established in the City's Civic Park Standards and Guidelines in order to accommodate the amenities needed for such a park.

Policy 2.2.1: New sites should conform to the criteria for Site selection in the parks and recreation Master Plan.

Analysis: The subject site meets the criteria for site selection because the property is flat and fully usable; there are no encumbrances that would impede a future park use such as power lines, easements and geologic hazards; the site can be easily accessed by pedestrians, bicyclists, and motorists; there are no unsafe environmental constraints such as wetlands and flood plains; a future park will be compatible with the existing surrounding land uses because it is adjacent to retail businesses and offices with employees that can enjoy the park at various times of the day.

Zoning Regulations:

As set forth in the Fremont Municipal Code (FMC), general offices, retail trade, services, finance, insurance and real estate, and public uses, such as a plaza are allowed uses within the Central Business District. Therefore, the current uses on the site may continue with other possible allowed uses added.

Environmental Review:

The General Plan conformity finding is not a project as defined by CEQA. Future transfer of property and continued use of the property will be exempt from CEQA review per Section 15061(b)(3) because the project has no potential for causing a significant effect on the environment.

PUBLIC NOTICE AND COMMENT:

A public notice is not required; however, a Hearing Notice was published by the *Tri-City Voice* on June 10, 2009.

ENCLOSURE:

Informational Item:

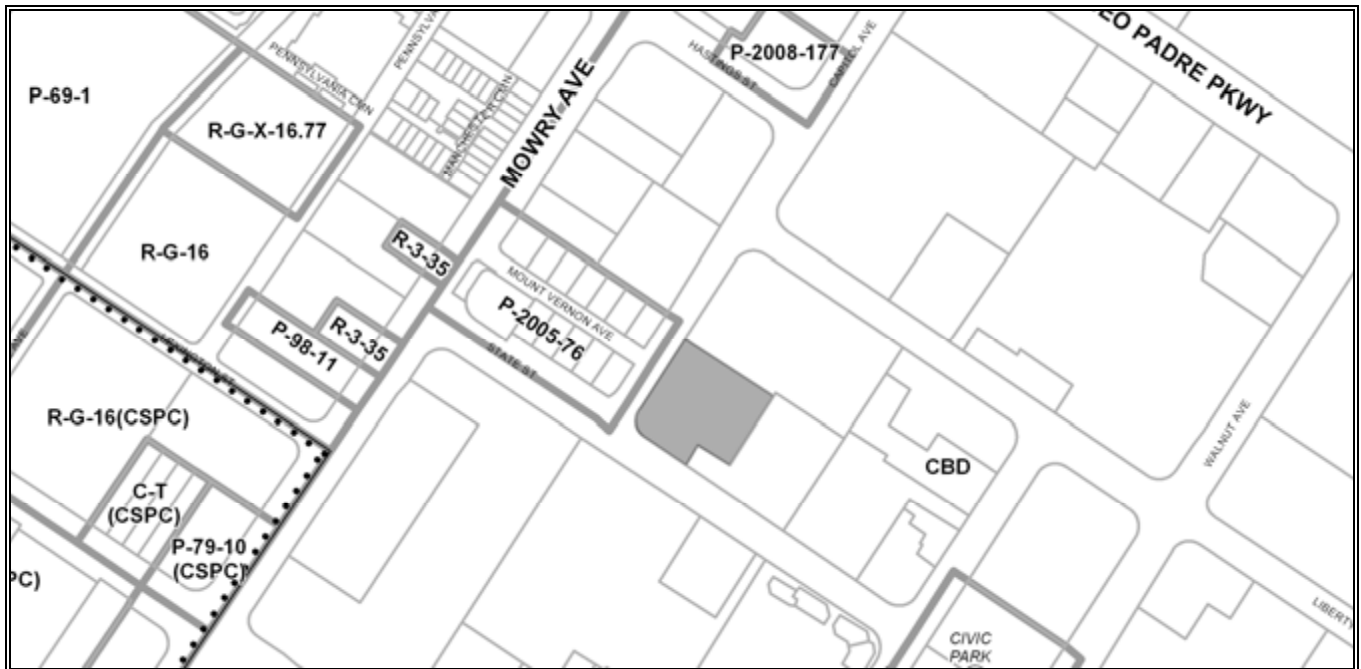
1. [Map with locations of City offices](#)

RECOMMENDATION:

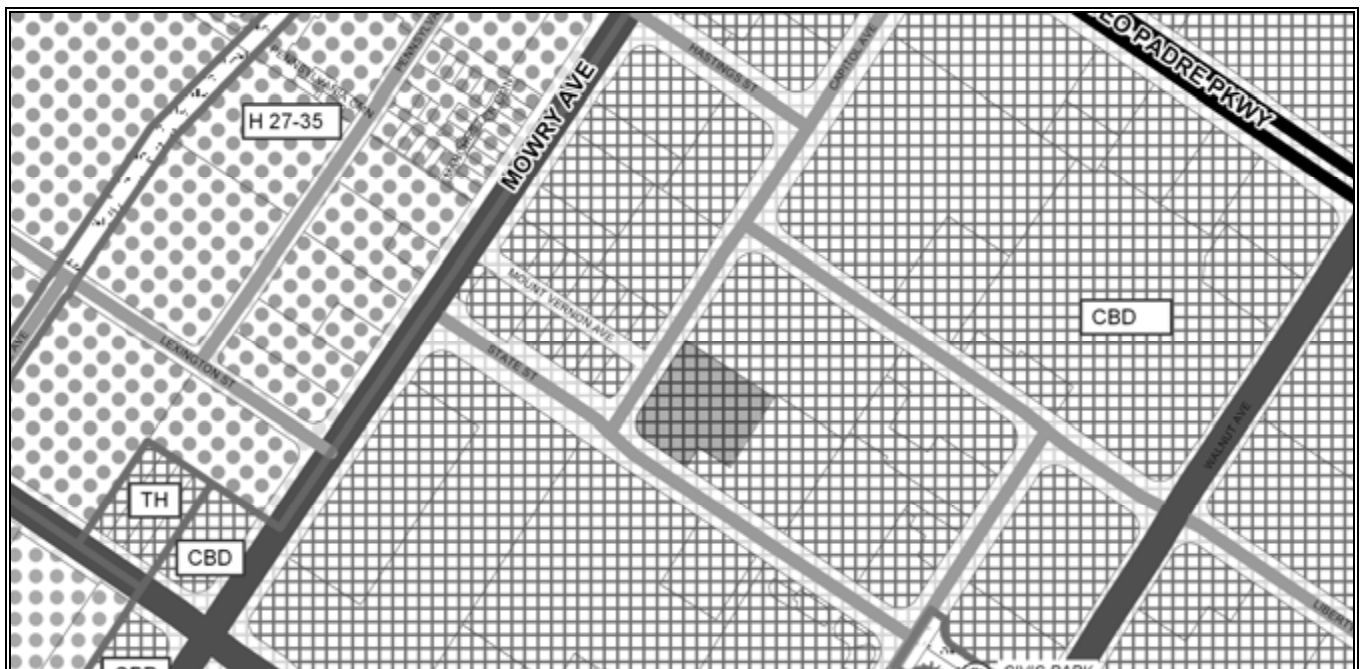
1. Accept public comment. Public hearing is not required.
2. Find the City's acquisition of a 1.59 acre parcel located at 39102 State Street, containing a 22,000 square foot commercial building, for the continued Central Business District uses and future recreational uses including a future civic park, is in conformance with the Fremont General Plan.

Existing Zoning

Shaded Area represents the Project Site



Existing General Plan



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ACRONYMS

ABAG	Association of Bay Area Governments	HBA	Home Builders Association
ACCMA	Alameda County Congestion Management Agency	HRC	Human Relations Commission
ACE	Altamont Commuter Express	IS	Initial Study (CEQA)
ACFCD	Alameda County Flood Control District	JPA	Joint Powers Authority
ACTA	Alameda County Transportation Authority	Ldn/DNL	Day-Night Average Sound Level
ACTIA	Alameda County Transportation Improvement Authority	LLMD	Lighting and Landscaping Maintenance District
ACWD	Alameda County Water District	LOS	Level of Service
BAAQMD	Bay Area Air Quality Management District	MND	Mitigated Negative Declaration (CEQA)
BART	Bay Area Rapid Transit	MMRP	Mitigation Monitoring and Reporting Program (CEQA)
BCDC	Bay Conservation & Development Commission	MTC	Metropolitan Transportation Commission
BMPs	Best Management Practices	NEPA	National Environmental Policy Act
BMR	Below Market Rate	ND	Negative Declaration (CEQA)
CBD	Central Business District	NOC	Notice of Completion (CEQA)
CC&R's	Covenants, Conditions & Restrictions	NOD	Notice of Determination (CEQA)
CDBG	Community Development Block Grant	NOP	Notice of Preparation
CDD	Community Development Department	NPDES	National Pollutant Discharge Elimination System
CEQA	California Environmental Quality Act	PC	Planning Commission
CIP	Capital Improvement Program	PD	Planned District
CMA	Congestion Management Agency	PUC	Public Utilities Commission
COF	City of Fremont	PVAW	Private Vehicle Accessway
CUP	Conditional Use Permit	PWC	Public Works Contract
dB	Decibel	RDA	Redevelopment Agency
DEIR	Draft Environmental Impact Report (CEQA)	RFP	Request for Proposals
DO	Development Organization	RFQ	Request for Qualifications
DU/AC	Dwelling Units Per Acre	RHNA	Regional Housing Needs Allocation
EBRPD	East Bay Regional Park District	ROP	Regional Occupational Program
EDAB	Economic Development Alliance for Business (County)	ROW	Right of Way
EDAC	Economic Development Advisory Commission (City)	RTC	Response to Comments (CEQA)
EIA	Environmental Impact Analysis	RWQCB	Regional Water Quality Control Board
EIR	Environmental Impact Report (CEQA)	SPAA	Site Plan and Architectural Approval
EIS	Environmental Impact Statement (NEPA)	STIP	State Transportation Improvement Program
FAR	Floor Area Ratio	TCRDF	Tri-Cities Recycling and Disposal Facility
FEIR	Final Environmental Impact Report (CEQA)	T&O	Transportation and Operations Department
FEMA	Federal Emergency Management Agency	TOD	Transit Oriented Development
FFD	Fremont Fire Department	TS/MRF	Transfer Station/Materials Recovery Facility
FMC	Fremont Municipal Code	UBC	Uniform Building Code
FPD	Fremont Police Department	USD	Union Sanitary District
FUSD	Fremont Unified School District	VTa	Santa Clara Valley Transportation Authority
GIS	Geographic Information System	WMA	Waste Management Authority
GPA	General Plan Amendment	ZA	Zoning Administrator
HARB	Historical Architectural Review Board	ZAP	Zoning Administrator Permit
		ZTA	Zoning Text Amendment

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2009 PLANNING COMMISSION MEETINGS

Date	Meeting Type
1/08	Planning Commission Meeting
1/15	Long Range/General Plan Meeting for Planning Commission
1/22	Planning Commission Meeting
2/12	Planning Commission Meeting
2/19	Long Range/General Plan Meeting for Planning Commission
2/26	Planning Commission Meeting
3/12	Planning Commission Meeting
3/19	Long Range/General Plan Meeting for Planning Commission
3/26	Planning Commission Meeting
4/9	Planning Commission Meeting
4/16	Long Range/General Plan Meeting for Planning Commission
4/23	Planning Commission Meeting
5/14	Planning Commission Meeting
5/21	Long Range/General Plan Meeting for Planning Commission
5/28	Planning Commission Meeting
6/11	Planning Commission Meeting
6/18	Long Range/General Plan Meeting for Planning Commission
6/25	Planning Commission Meeting
7/9	Planning Commission Meeting
7/16	Long Range/General Plan Meeting for Planning Commission
7/23	Planning Commission Meeting
8/27	Planning Commission Meeting
9/10	Planning Commission Meeting
9/17	Long Range/General Plan Meeting for Planning Commission
9/24	Planning Commission Meeting
10/8	Planning Commission Meeting
10/15	Long Range/General Plan Meeting for Planning Commission
10/22	Planning Commission Meeting
11/12	Planning Commission Meeting
11/19	Long Range/General Plan Meeting for Planning Commission
12/10	Planning Commission Meeting
12/17	Long Range/General Plan Meeting for Planning Commission